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The Role of Human Actors in Influencing District Plan Provisions and Resource Consent Decisions: A case study from South Canterbury

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of the requirements for the Degree of
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Andrew Graeme Donald Ross

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Abstract of a Dissertation submitted in partial fulfilment of the
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The relationship between rural and urban land is one that considers rural land to be transformable for the benefit of the urban environment. Consequently, lifestyle allotment subdivision has resulted in the residentialisation of rural areas. The issue with such land use change is that there is a significant loss of versatile soils and perhaps more significantly, the potential for reverse sensitivity to become an issue for existing rural land users. Lifestyle allotment subdivision is achieved in a New Zealand context under the Resource Management Act 1991 (RMA) and guided by the provisions of District Plans. Those provisions are prepared to manage, and resource consents are sought in order to achieve, lifestyle allotment subdivision. However, the process through which lifestyle allotments are achieved provides the opportunity for one to exercise agency to influence the provisions and decisions. The purpose of this research is to explore human agency within the context of the RMA and identify how provisions and decisions are influenced. The Timaru District Council and Mackenzie District Council in South Canterbury were chosen as case studies and were used to examine the key actors during the preparation process of their respective District Plans. It was found that individuals played key roles in producing quite contrasting District Plans despite the requirement that both had to be prepared in accordance with the RMA. Four resource consent decisions for lifestyle allotment subdivisions were then selected from each Council to ascertain how agency can occur under different District Plan provisions. This also enabled a comparison of an effects-based approach to planning (Mackenzie District Council) versus an activities-based approach (Timaru District Council). The results identify key actors who shaped the provisions and decision-making processes. By deconstructing the context, the constraints the RMA places on the individual exercise of agency in the planning processes is illustrated. The more powerful actors were typically those who understood planning and were in positions which enabled their input to be valued. Thematic throughout the research was the

ability of agency, within the context of the RMA, to shape the environment in which we live. Thus, the analysis deconstructs how place is shaped in rural New Zealand.

Keywords: Human agency, Resource Management Act 1991, lifestyle allotments, subdivision, District Plan, engagement, rural productive land.

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Chapter 1

Introduction

In 2016, the Food and Agriculture Organisation of the United Nations (2016) released a summary of a discussion forum in regard to the 'Global Forum on Food Security and Nutrition'. The discussion points identified by the forum addressed how the relationship between 'rural and urban' is perceived in a way that favours rural transformation and urbanisation. The perception of the rural – urban relationship expressed there was that the rural environment should change to meet urban demand. However, the wider implications of such change directly affects the food security through the loss of rural production land. These implications are addressed in the United Nations - Sustainable Development Goals 2015 (SDG) by Goal 3, which seeks to achieve zero hunger through mechanisms such as sustainable rural development and agriculture (United Nations, 2015). Likewise, the SDG 11 of 'sustainable cities and communities' seeks to ensure urban environments provide sanitised water, and sustainable waste management and transportation systems. Thus, urban and rural environments are identified as interrelated elements in global sustainability conventions, and consequent legislation.

Global issues in regard to tenure and land use provide the underlying issues that allows the change of land use in rural environments which are often characterised as urban or peri-urban development. However, peri-urban development creates a hybrid of environments in which residential activity occurs within a rural landscape, much like that envisioned in the work of Frank Lloyd Wright's concept of the 'Broadacre City' (Hall, 1975). Lifestyle allotments take the hybrid environment that Wright theorises and further detaches residential activity from the urban area, thus creating a fragmented rural environment where one would find smaller residential allotments located throughout large rural allotments (Grant, 2000).

Lifestyle allotment subdivision in New Zealand is a planning matter that creates controversy due to the residentialisation of rural areas (Andrew & Dymond, 2012). Lifestyle allotments became popular when the farming industry had to consider diversification when government subsidies were removed for agriculture in the mid 1980's, which reflects the neoliberal shift of New Zealand (Montgomery, Page, & Borrie, 2017). The shift toward lifestyle allotment subdivision indicated the monetary value associated with these allotments. Lifestyle allotments are considered to be worth much more per

hectare than that associated with rural production land. The higher value per hectare of lifestyle allotments transpires from the value associated with amenity and social status (Andrew & Dymond, 2012). Contrastingly, rural land is primarily marketed and needed for productivity values.

However, there is a growing concern that lifestyle allotments are taking over rural production land with unproductive land use (Ministry for Primary Industries; Ministry for the Environment, 2019). This environmental change throughout New Zealand since the 1980's is characterised as rural fragmentation, in which residentially based activities are located within and over former rural production areas such as horticulture (Ministry for Primary Industries; Ministry for the Environment, 2019). Unsurprisingly, case studies are regularly undertaken to assess the impacts of lifestyle allotments. Those impacts are characterised as rural amenity, reverse sensitivity, discharge, or the use of versatile soils (Andrew & Dymond, 2012). Andrew and Dymond (2012) found that lifestyle allotments encompass 35% of the most versatile soils in the Auckland region and having planning implications for neighbouring farmers. For example, 'reverse sensitivity' is a term which is used in planning to describe the impact of a new activity on existing activities (Pardy & Kerr, 1999). An example of this would be if a new dwelling on a lifestyle allotment was neighbouring a horticulture allotment that is sprayed regularly with pesticides, or has bird scaring devices generating significant noise. The lifestyle allotment in this instance may require the farming practises to change so that the landowners are not adversely affected through spray drift or noise. Some might be of the opinion that it is the right of the landowner to use their land as they wish. In contrast, others might say that society has a right to ensure that land is used in a manner that benefits society as a whole. Whether the best use is for production or for housing then becomes a political and economic debate that sees its resolution through planning processes and plans. The underlying issue here is related to individual property rights, and perhaps society's preference for the most efficient land use for production.

Planning has historically encompassed public, governmental and private actions which in turn, shape place. Relationships of power, social status and tensions between actors are common issues within the planning profession. Structural constraints, bound by the context of a particular planning issue, influence how one can act. In order to deconstruct how places are shaped within the context of planning, the theory of human agency can be applied. Human agency theory analyses how places are created and shaped through an approach that enables the role of certain actors to be exposed and consequently analysed (Bandura, 2006; Healey, 2010). In order to do so, the planning context is required to be deconstructed to analyse structural constraints and the actors themselves. Thus,

human agency provides an avenue to explore the context of planning provisions and decision making, but one which is seldom applied in New Zealand.

1.1 Introducing the Resource Management Act 1991

Historically, the legislation influencing property rights in New Zealand was the Town and Country Planning Act 1977 (TCPA), which guided subdivision provisions through a method that prescribed permitted activities within a defined spatial area (Rennie, 2011). The Resource Management Act 1991 (RMA) replaced the TCPA in 1991, and sought to promote the sustainable management of natural and physical resources. However, the first-generation District Plans, prepared under the RMA, were considered by Rennie (2011) to simply be modified versions of the underlying TCPA Plans. The outcome of those provisions, which were now guided by the notification statuses of the RMA, consequently enabled engagement through the effects-based nature of the District Plans. The issues that prevailed was that the legislation, that being the RMA, challenged one's right over their land. These issues were associated with the land rights and characterised through the ability of the public to influence what one could undertake on their land (Littlewood, 2020). Thus, the RMA provides a platform for one to influence the land use activities on another's land through its planning processes. Amendments to the RMA in 2009 changed the adverse effect requirements which determined the notification status of applications, reducing the opportunity for the wider community to have a say on, among other things, an individual's proposed change of land, for instance from rural production to lifestyle allotment. However, the issue of property rights still prevails through the effects-based approach of the RMA. Throughout, the RMA is national legislation that is supposed to enable people to do what they want with their land. However, the outcome in reality is comparatively restrictive.

The RMA requires District Councils to prepare a District Plan. The District Plan outlines provisions which activities need to comply with, otherwise resource consent is required. The preparation process for District Plans are outlined in Schedule 1 of the RMA. Additionally, the decision-making process on resource consent applications are outlined in Part 6 of the RMA. Such preparation and decision-making processes provide a platform for actors to influence outcomes and are specified under the relevant sections of the RMA. The extent to which an actor is able to influence outcomes through the process is often seen as restricted or given opportunity by the structures within which they can operate. An actor's engagement with these processes is my focus in this dissertation in order to establish the extent to which actors can influence provisions and decisions. To address this

in a broad context would be difficult within the constraints of a dissertation and hence the focus is on local case studies.

To date, no National Legislation exists that directly impacts on lifestyle allotments. However, the National Planning Standards 2019 and National Policy Statement on Urban Development 2020 may result in future amendments that seek to align District Plan provisions throughout New Zealand. This contrasts with the space in which first generation District Plans in regard to lifestyle allotments were created, which did not have guiding regulative policy or standards apart from the RMA.¹ As there was no guiding legislation that predetermined what a lifestyle allotment was, the definition of a lifestyle allotment is in itself a contested term, with literature regularly referring to lifestyle allotments as 'smallholdings', 'hobby farms' or 'rural-residential allotments' (Cook & Fairweather, 2005; Andrew & Dymond, 2012). Due to the effects-based approach of the RMA, the definition of a lifestyle allotment does not always consider a net area, rather it is left to what the market wants and the consequent effects of achieving that.

Consequent of the limited provisions that guide lifestyle allotment provisions, the context in which lifestyle provisions are prepared and decision-making processes occur are regularly contested. The contested decision-making context in some cases results in decision being appealed to the Environment Court e.g. *Endsleigh Cottages Ltd v Hastings District Council* [2020] NZEnvC 64.

1.2 Research Aims and Objectives

The aim of this research is to apply human agency in an analysis of the relationship between lifestyle and rural land use. In doing so, lifestyle allotment subdivision will be used as a focal point due to the contested views of such land use in New Zealand society.

There are few or no applications of an agency analysis in the context of lifestyle allotment subdivision in New Zealand. The overall motivation to undertake this research is to ascertain how one can influence what they can do over their own land, or that of another. This will require the RMA to be examined to establish if it is allowing human actors to influence provisions and decisions of their own

¹ The Building Act 2004 is another piece of legislation which focuses on the structural standards of buildings. The Building Act 2004 is not a mechanism for land use change.

land in regard to lifestyle allotment subdivision. Therefore, the aim of this research proposal is to contribute to an understanding of rural residential subdivision in New Zealand and the influence of actors.

Human agency theory will be applied in the research in order to explore which philosophy prevails as dominant in District Plans (e.g. is it actors that guide decisions, or is it the provisions). By identifying the actors, their actions and the methods of engagement will be critically analysed under the RMA in the case study context.

To achieve the aim of this research, the focus will be on how the RMA provides for actors to influence outcomes. In particular:

- How do the RMA processes allow for actors to influence District Plan provisions?
- Who are the actors who are influential in preparing the District Plan and at what stages are they involved?
- How do the RMA processes allow for actors to influence Resource Consent decisions for lifestyle allotment subdivision applications?
- Who are the actors who are influential in preparing the Resource Consent decisions for such allotments and at what stages are they involved?

1.3 Hypothesis

There is no national policy or environmental standard on subdivision in New Zealand, therefore the provisions are not guided directly by National Policy Statements or National Environmental Standards. The RMA is an effects-based law that provides for participation of actors throughout the processes of plan preparation and decision making. During the creation or review of a District Plan or resource consent decision, actors can engage and frequently do. Therefore, my hypothesis is that the district plan provisions are subverted by the outcomes of the resource consent processes as individual agency is dominant compared to the district plan preparation process where collective agency is dominant.

1.4 Dissertation Structure

This dissertation includes seven chapters. Chapter two provides an overview of the context of relevant legislative processes such as the RMA 1991. In chapter three, literature relevant to human agency is reviewed. Following this, chapter four outlines the document analysis methodology undertaken to derive the results which are presented in chapter five. The literature of human agency guides the discussion in chapter six. Finally, chapter seven provides a concise conclusion derived from the results and discussion chapters and recommends possible avenues for future research.

Chapter 2

Planning Context

The following chapter will provide the foundation of information required to understand the context in which the research is being undertaken. Information in this chapter includes the definition of a lifestyle allotment, how the RMA sets out the process of achieving a subdivision resource consent as well as how District Plans are prepared. In addition, the role of Community Boards is outlined. Certain information, such as the term lifestyle allotment is not clearly defined by the literature. I will derive a definition which I will adopt to define the term 'lifestyle allotment' for this research.

2.1 Defining a 'Lifestyle Allotment'

As the RMA does not define lifestyle allotment subdivision, relevant literature and legislation was reviewed to formulate a definition that is applicable in the context of this research. The definition will be applied under the Methodology and Findings section of this research report to guide an analysis of the relevant planning processes of Timaru and Mackenzie District Councils (the rationale for the choice of councils is set out in the Methodology Chapter).

In New Zealand, the rise of lifestyle allotment subdivision became popular when the farming industry had to consider diversification after government subsidies were removed from agriculture. The subsidy removal was resultant of the labour government being elected in 1984, consequently farmers began to sell parts of their farms to reduce unsustainable mortgages (Grant, 2000; Andrew & Dymond, 2012; Montgomery, Page & Borrie, 2017). The research undertaken by Andrew and Dymond (2012) found that lifestyle allotments are legally reversible, but effectively irreversible as it would be very uncommon to remove a dwelling and amalgamate a lifestyle allotment to a rural production parcel of land.

The scope of literature on lifestyle allotments consists of both New Zealand and International case studies and the findings allow us to establish the anticipated characteristics of lifestyle allotments within the New Zealand context. A common theme throughout all literature is that the overall purpose for residing on the allotment is not for economic gain (Andrew & Dymond, 2012). Thus, the research Cook and Fairweather (2005) undertook sought to determine the motives behind lifestyle

allotment owners in New Zealand. The results illustrated that landowners purchased the lifestyle allotments for personal satisfaction and the want for a rural lifestyle. For example, the owner's ability to experience open space, rural amenity, privacy and clean air. However, the determining factor was that a lifestyle allotment owner's main income was not derived from the rural production of the land (Cook & Fairweather, 2005).

Although lifestyle allotments create an influx of people to rural areas, the literature shows that those people still have a strong urban connection (Grant, 2000). For example, one's income would be derived from urban based occupations, rather than relying on the rural productivity values of their lifestyle allotment.

Unsurprisingly, the literature aligns with the definition of lifestyle land provided by Land Information New Zealand (LINZ). The definition is referred to throughout the Rating Valuation Rules 2008 which to date, remains unchanged. Additionally, the definition is also referred to in National Policy such as the Overseas Investment Amendment Bill 2020. The definition from LINZ is outlined as follows:

"Lifestyle land, generally in a rural area, where the predominant use is for a residence and, if vacant, there is a right to build a dwelling. The land can be of variable size but must be larger than an ordinary residential allotment. The principal use of the land is non-economic in the traditional farming sense, and the value exceeds the value of comparable farmland." (Land Information New Zealand, 2010)

In the New Zealand context, the Town and Country Planning Act 1977 was the key legislation that guided what was then County, City, District and Borough Councils, specifically under District Schemes. However, the details of allotment areas were inconclusive and not clearly articulated throughout historic legislation.

2.1.1 Rural lifestyle or Rural Residential?

The Draft Growth Management Strategy for the Timaru District Council discusses residential development in rural environments. The document addresses the difference between rural

residential and rural lifestyle allotments through net area (Timaru District Council, 2018). Rural residential allotments were defined as being rural allotments less than 2ha in area. Rural lifestyle allotments were defined as being rural allotments that were greater than 2ha in area but no greater than 10ha.

With regard to Regional Growth in the Canterbury Regional Policy Statement, Policy 5.3.1(b) the following is stated:

Policy 5.3.1(b) To provide, as the primary focus for meeting the wider region's growth needs, sustainable development patterns that:

ensure that any

- a. urban growth; and
- b. limited rural residential development

occur in a form that concentrates, or is attached to, existing urban areas and promotes a coordinated pattern of development;

...

(Canterbury Regional Council, 2013)

The National Planning Standards 2019 outline the Rural Lifestyle Zone which is defined as being "areas used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the general rural and rural production zones, while still enabling primary production to occur" (New Zealand Government, 2019, p. 37).

Although the historic documents refer to rural lifestyle and rural residential, the area of the allotment varies between Councils and documents. Within the context of the two District Plans, rural residential and rural living sites are commonly referred to. The area of rural residential allotments are limited to 2ha under the Timaru District Plan. Under the Timaru District Plan, these rural sites that reflect such areas are considered to be Rural Living Sites. In contrast, the Mackenzie District Plan has zones titled "rural residential" that have a minimum allotment size of 4ha (Mackenzie District Council, 2004). The size of rural allotments have further external factors that need consideration prior to defining what a lifestyle allotment is for the purposes of the research.

2.1.2 Influence of Regional Councils

In addition to District Plan provisions, the Regional Council influences the outcome of lifestyle allotments due to the discharge of wastewater and stormwater, and the supply of potable water. Specifically, the discharge of wastewater onsite is a matter that requires systems to be engineer designed. As the Mackenzie District and Timaru District are both located in the catchment of the Canterbury Regional Council, considerations should be had to the provisions influencing wastewater discharge. Section 5, Rule 5.8 of the Canterbury Regional Land and Water Plan (CRLWP) requires consent for any new discharge of wastewater onto a parcel of land that is less than 4ha in area (Canterbury Regional Council, 2018).

For the purpose of the research, lifestyle allotments are commonly represented in legislation and policy as being rural residential allotments, rural living sites and rural lifestyle allotments. It is concluded that lifestyle allotments will be defined as a site located in a rural zone and be no greater than 4 hectares in area to align with the CRLWP. Due to the allotments sought being less than 4ha, the Rural Residential Zone in the Mackenzie District is excluded from the research.

2.2 The Resource Management Act 1991

As the area of a lifestyle allotment is now defined as being between 1 and 4 hectares in area, the process of achieving such allotments through the process of subdivision is detailed. The RMA is the legislation that provides for the means to create and give effect to a District Plan in which the subdivision provisions of a District are outlined, with objectives and policies that shape provisions. The purpose of a District Plan is to “...assist territorial authorities to carry out their functions in order to achieve the purpose of this Act” (Section 72, RMA 1991).

2.2.1 How are District Plans prepared under the RMA?

The RMA outlines the process of preparing a District Plan. Under Schedule 1 of the RMA, clauses 3, 3B and 3C outline consultation requirements when dealing with those who may be affected, for example Iwi by a proposed plan or plan change. Clause 5 outlines the process for the Council if publicly notifying the District Plan in regard to submissions and time periods. For example, under clause 5(5), a local authority shall provide a copy of the proposed plan in every public library. The

way in which a local authority is required to act is specified in detail, to the extent that the Minister for the Environment must receive a copy of the proposed plan.

2.2.2 How is subdivision achieved under the RMA?

To achieve a subdivision, a resource consent is generally required. Part 6 of the RMA outlines the requirements of a Territorial Authority when processing a resource consent for subdivision, specifically engagement through the notification status of Section 95A and 95B of the RMA. This will be further expanded upon in the results chapter.

Under section 218 of the RMA, the term subdivision of the land means the following:

1. (a) the division of an allotment—

(i) by an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of the allotment; or

(ii) by the disposition by way of sale or offer for sale of the fee simple to part of the allotment; or

(iii) by a lease of part of the allotment which, including renewals, is or could be for a term of more than 35 years; or

(iv) by the grant of a company lease or cross lease in respect of any part of the allotment; or

(v) by the deposit of a unit plan, or an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of a unit on a unit plan; or

(b) an application to the Registrar-General of Land for the issue of a separate certificate of title in circumstances where the issue of that certificate of title is prohibited by section 226,—

For the purposes of this research, only subdivisions made under s218(1)(a)(i) of the RMA will be considered, as this is the predominant approach to obtain freehold subdivision.

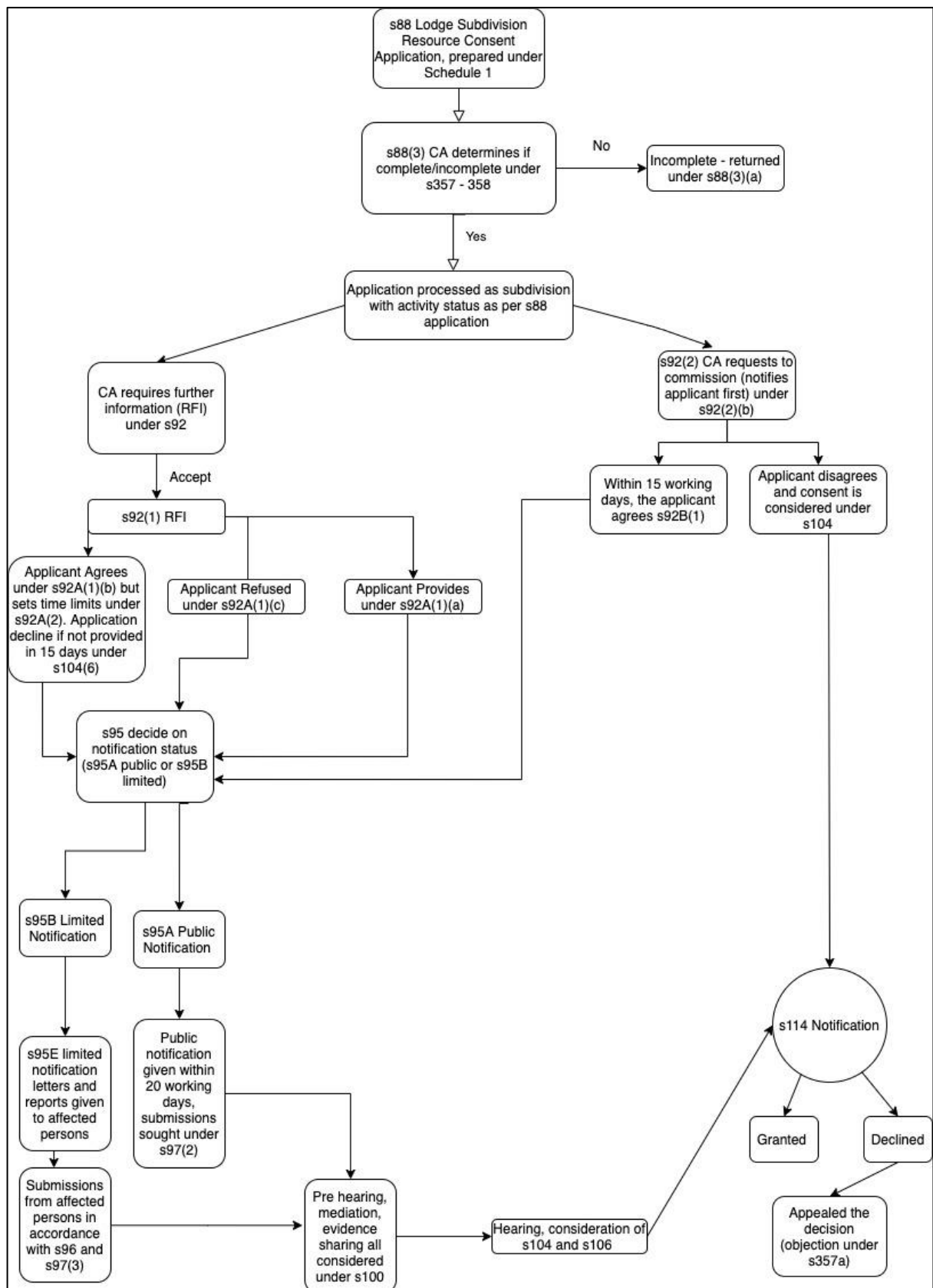


Figure 1 Process of achieving subdivision resource consent under the Resource Management Act 1991.

(Source: Author)

As outlined in Figure 1, when processing a resource consent for subdivision, there are two key aspects to how a decision will be made on the application, those being the activity status and notification status. Under the RMA 1991, the activity status is determined from the District Plan and consists of one of the following classes of activities from Section 87A of the RMA 1991: controlled, restricted discretionary, discretionary, non-complying, or prohibited. Controlled activities must be granted by Council subject to conditions of consent. Restricted discretionary requires Council to limit their discretion to matters listed in the respective District Plan. Discretionary and Non-complying allow Council to consider a wider range of effects during their assessment of environmental effects. The notification status of a resource consent is derived from Section 95 of RMA 1991, and in some circumstances predetermined by the District Plan. The process to consider if public notification is required is outlined under Section 95A of the RMA 1991, with a notable consideration being if the adverse effects are more than minor in accordance with Section 95D of the RMA 1991. The process to consider if limited notification is required is outlined under Section 95B of the RMA 1991. Thus, a similar process is required to assess if adverse effects are likely to be more than minor on a person in accordance with Section 95E of the RMA 1991.

2.2.3 Boundary Adjustments

Lifestyle allotments can also be created through a boundary adjustment. A boundary adjustment is a type of subdivision that is differentiated from other subdivisions in District Plans. The process of applying for them follows the same RMA 1991 processes as a normal subdivision. However, the boundaries being subdivided are part of separately saleable existing allotments of which, the resultant allotments are not increased as a result of the subdivision (Mackenzie District Council, 2004; Timaru District Council, 2005:2018). Under the TDP and MDP, boundary adjustments are at a minimum, discretionary based activities which generally require the need to align with underlying zone rules to ensure the resultant titles are somewhat anticipated in the surrounding environment. The boundary adjustment subdivision will not be specifically addressed as part of the research as the discretion of the processing planner is derived from the fundamental components of the underlying zone subdivision rules, (e.g. minimum allotment area). Thus, a boundary adjustment could create a lifestyle allotment, though the underlying rules seek to ensure that resultant allotments are anticipated by the subdivision standards of the zone.

2.2.4 Amalgamations

Subdivision can occur when one of the resultant titles is amalgamated with an existing record of title. Although a lifestyle allotment may be created as an allotment, the amalgamation condition registered upon granting the decision does not create a lifestyle allotment as the result title. Thus, amalgamation of lifestyle allotment will not be investigated as part of this research.

2.3 Community Boards

Community Boards are used as a tool by Councils to help ascertain feedback on matters that affect their community. The role of a Community Board is defined under Section 52 of the Local Government Act 2002 (LGA 2002) and outlined below:

- (a) represent, and act as an advocate for, the interests of its community; and
- (b) consider and report on all matters referred to it by the territorial authority, or any matter of interest or concern to the community board; and
- (c) maintain an overview of services provided by the territorial authority within the community; and
- (d) prepare an annual submission to the territorial authority for expenditure within the community; and
- (e) communicate with community organisations and special interest groups within the community; and
- (f) undertake any other responsibilities that are delegated to it by the territorial authority.

As per the definition, a Community Board is anticipated to communicate with local residents and act on their behalf. Their actions are expected to reflect that of collective agency during planning processes.

2.4 The New Zealand Planning Institutes Code of Ethics

Planners in New Zealand are not required to be licenced like Architects or Engineers. Whilst a large number of planners are members of the New Zealand Planning Institute (NZPI), not all those who hold planning positions are. The NZPI requires planners, whom are registered as a member of the institute, to act in accordance with the Code of Ethics (NZPI, n.d.). The Code of Ethics outlines four components, those being 'the Planners Responsibility to the Public', 'the Planners Responsibility to

the Profession and to Colleagues’, ‘the Planners Responsibility to Clients and Employers’, and ‘the Planners Self Responsibility’. The responsibility to the public held by a planner is vital to the contemporary practice of the profession. Most notably to this research is the ethical code of 8.1.3 which states that “A planner shall, subject to respecting a client's or employer's right of confidentiality, endeavour to ensure that full, clear and accurate information is available, and that there are meaningful opportunities for public input and participation.” Thus, planners who are registered as a member of the Institute are required to act in the best interests of the public.

2.5 Summary

The literature discussed here illustrates that the characteristics of lifestyle allotments in a New Zealand context are reasonably well-defined. However, the net area of a lifestyle allotment is inconclusive even though it is the common characteristic when defining lifestyle allotment subdivision within a District Plan. For the purposes of the research, I adopted an area between 1 and 4 hectares and achieved under s218(1)(a)(i) of the RMA, excluding boundary adjustments and amalgamations (Timaru District Council, 2005; 2018).

In terms of how District Plans are prepared, the methods outlined under Schedule 1 outlined the required engagement process with actors such as community boards, councillors, stakeholder and the public, in other words the broad statutory constraints and opportunities for collective agency. The general parameters within which individuals may operate are those of the RMA and relevant criminal, civil and administrative law, however members of the NZPI are also constrained and compelled by their Institute’s code of ethics to facilitate meaningful public participation, individual or collective, in planning processes. With this domestic context in mind, the next chapter addresses the theoretical context of the research.

Chapter 3

Theoretical Context

Human agency is a term used in the interconnected realms of human geography, sociology and psychology. The Dictionary of Human Geography defined human agency as the following:

“The ability of people to act, usually regarded as emerging from consciously held intentions, and as resulting in observable effects in the human world. Questions about whether individuals have the freedom to act or whether their actions are constrained, or even determined, by structural forces have been at the heart of many debates in contemporary human geography.”

(Gregory, Johnston, Pratt, Watts, & Whatmore, 2009, p. 347)

Therefore, human agency seeks to define one’s ability to act as an actor (Gregory, Johnston, Pratt, Watts, & Whatmore, 2009). In a response to Marxist theories that considered social structures to be paramount in shaping society, human geographers took the approach which perceived society as being constructed through the actions of humans. Those actions then form agency, through which an individual or group can decide to act. However, for one to act, they must act within a certain context. As reflected by Lonning’s (2018) and Chen, Xu, and Lew’s (2020) research, the space where one acts within is a fundamental component in understanding how agency is exercised. Therefore, the boundaries of context are required to be deconstructed in order to examine the core environment where agency may, or may not, transpire.

Upon considering context, the structural components may affect how agency is exercised. Sociological structuralist theorists, such as Karl Marx, (see “The Social Thought of Karl Marx”, (Holt, Ebrary & Buschman, 2015)) recognised that structural components benefitted society in an unequal manner and later generated social classes. This could be described as benefiting the small group of upper-class residents and overlooking the larger group of lower-class residents in terms of opportunities provided through social class which was derived from one’s wealth. However, theorists such as Anthony Giddens, consider that one can exercise their own agency and this in turn shapes and evolves the structural forces (see, for instance, Giddens’ book titled “The Constitution of Society” (1984). Giddens’ (1984) structuration theory is considered to reflect research that analyses both human agency and structure.

To begin, the structural context in which actors seek to act shall be critically analysed. The foundation of the literature review is Healey's (2010) book "Making Better Places". The structure of context is addressed and characterised through factors such as empowerment, social status and government legislation. By deconstructing context, it is anticipated that this will enable structural forces to be examined with the overarching theory of human agency being critically analysed in the latter section of the literature review.

3.1 Context

Deconstructing the context in which actors operate can be used to analyse how structural forces influence human agency. Context in an applied form is considered most applicable to place (Healey, 2010). By deconstructing the structural forces that shape place, the context where actors seek to act can be analysed.

Context is considered by Healey (2010) to consist of five components, those being political, social, cultural, economic and environmental. These five components act as forces which consequently shape the conditions that are prevalent in certain contexts. History in the West provides an example of how place can be used to represent neoliberal practices that seek to promote economic competitiveness (Healey, 2010). The planning structures of governance in the West suggest that the dominant forces that structure social, political and economic relationships will always shape a place. Healey (2010) considers that those dominant forces reflect the structural dynamics in which a force acts. During the 2008 financial crisis, political communities emerged to be more vocal in communicating their actions in the West; a response that fought against the capitalist movements of development focused governments and, argued Healey (2010), economic markets themselves are structured by collective action. Thus, Healey concluded that "wealth and opportunity should be spread in ways that are not too unjust, and the development should happen in ways that do not damage present and future environmental conditions" (Healey, 2010, p. 223).

In the context of a region, Tewdwr-Jones and Lord (2009) argue that the effectiveness of an actor is integral to other regional actors. Their social status, if they are regularly active as an actor, or if they have official recognition in the region or area are important (Tewdwr-Jones and Lord, 2009). Similarly, Healey (2010) would argue that an actor could be more effective with a higher social status, economic wealth and official recognition but only if the context allowed for such actions to occur.

Thus, dominant forces of a particular structure can promote, enable or restrict human agency (Loyal & Barnes, 2001; Healey, 2010).

In application, deconstructing the context could illustrate how development can adversely affect the environment. Reflecting upon Healey's five components of context, the economic and social components of context may in some circumstances favour agency with higher authority and wealth and in turn adversely affects less valuable components in the context, such as the environment. In terms of planning and development in New Zealand, the context could be deconstructed into components of proponents, opponents, government legislation, incidental and personal economic advancement, as well as social, cultural and environmental values. However, what structural components of context restrict social and or economic powers affecting decisions remains unclear.

As first argued by Hayek in 1944, (Hayek, 1944:1994), market processes need some form of institutional provisions, such as exclusive property rights and a legal system for dispute resolution. Institutional provisions in a planning context would consist of spatial or resource management plans, and as recognised by Healey (2010), those plans can shape property markets through provisions demanding sustainability contributions or restrictions.

Deconstructing the context also allows structural forces to be exposed that directly relate to human agency. Tewdwr-Jones and Lord's (2009) concept can be used to identify the level of empowerment certain actors may have when engaging that could lead to them being more successful in achieving outcomes, formalising collective agency, or acting in proxy agency (Muhlberger, 2005; Bandura, 2006; Gregory, Johnston, Pratt, Watts & Whatmore, 2009).

Structural forces prevailed by restricting one's ability to act in two case studies that related to engagement. In a rural community in Norway, Lonning (2018) found that the formational phase of an engagement plan restricted those actors who engaged. This was replicated in the Philippines case study by Chen, Xu, and Lew (2020) that found that dominant government structures influenced actors' engagement in top-down approaches. Thus, both Lonning (2018) and Chen et al. (2020) derived that human agency can be restricted through certain governments and or legislation. In the context of the RMA, can society influence the land use on someone's land, or is the landowner 'lord

of his/her domain'? This raises the question surrounding the purpose of the RMA which seeks to promote the sustainable management of natural and physical resources. Does the RMA seek to enable or restrict human agency?

Although Healey addresses that context is paramount to understanding agency, time becomes an issue that may restrict how the relationship between structure and agency is analysed. Healey (2010) expresses concern that the underlying issues may be masked as those actors who influenced such outcomes are "now distanced, in time and place, from ourselves" (p. 233). Healey predominantly writes within the context of planning and in the broader sense of 'shaping places'.

Throughout, the outcomes of development continue to shape context (Healey, 2010). In the planning profession, this matter can be illustrated by simply describing the site and surrounding environment over a period of time. If a developer obtained a subdivision in 2010 and built five new dwellings, then their neighbour sought to subdivide in 2020, the environmental context has changed as there is an increase in allotment density and ancillary dwellings. Therefore, the context in which a decision is considered changes which aligns with how Healey conceptualised context as such a fluid term.

The importance of deconstructing the processes which formulate decisions ensures structural components are considered alongside human agency. It is clear that human agency is exercised within a particular context and the following section will analyse the key literature surrounding that.

3.2 Human Agency

The literature of human agency is characterised by actions or inactions and summarised to be one's ability to act (Gregory, Johnston, Pratt, Watts, & Whatmore, 2009). One's actions, or inactions, would consequently be derived from and be consistent with one's beliefs, identity and values (Muhlberger, 2005), noting that:

"Agency theory seeks to describe the peculiar kind of rational agent crucial to understanding self-motivated political engagement—one responsive to considerations of identity, ethics, and values" (Muhlberger, 2005, p. 164).

Muhlberger (2005) explicitly takes the concept of a rational man much further than that commonly used in economic theory as homo-economicus. In practice, non-rational theories in regard to decision making assume non-rational agents consider emotion, have limited knowledge and time (Gigerenzer & Gaissmaier, 2015).

Therefore, one's identity, ethics and values are considered by Muhlberger (2005) to form the foundation of social engagement that in turn connects with Emirbayer and Mishe (1998). Emirbayer and Mishe (1998) identify the temporal process of social engagement throughout human agency theory. When one acts, it is to engage.

An action is informed by one's past (their beliefs, identities, values and experiences), and is orientated toward the future and present. Those actions are shaped by the wider forces that themselves are products of how people have thought and acted (Healey, 2010). To be an actor, Emirbayer and Mishe (1998) argue that one has the ability to distance oneself from one's beliefs, identities, values and experiences. By doing so, the actor reconstructs their traditions to help act within an environment of evolving desires and purposes. The idea of distancing one's self from their traditions to understand evolving processes is illustrated throughout Noel Gough's (1999) research in which contemporary approaches to environmental education seek to favour certain forms of knowledge. For example, knowledge can be used as a tool to change one's view on a topic which results in the actor distancing themselves from traditional beliefs. In contemporary environmental education, this could be illustrated by the use of scientific knowledge to illustrate the global political movement surrounding climate change. If one does not distance oneself from one's traditions, the acceptance of 'new' knowledge and future thinking in terms of an actor is not possible; one would simply retain one's traditional views and it would result in inaction. Therefore, using knowledge as a tool to change one's opinion on an issue is powerful.

The social structural theory of Giddens (1984) can be used to expand on Gough's (1999) research by using knowledge as a tool to change one's opinion social structures. Giddens (1984) theory of social structures defined the following three aspects; signification, legitimation and domination (Giddens, 1984). These in turn seek to address the practice of language and discourse, normative perspectives or social norms, and power. Giddens ideology allows questions to be raised in regard to normative

perspectives and power. In terms of normative perspectives, there has been a growing concern that lifestyle allotments are taking over rural production land with an unproductive land use. Giddens' ideology may allow an insight into why there is no underlying normative perspective on the socially divided opinions in regard to rural land use.

Tewdwr-Jones and Lord's (2009) consideration of empowerment and its effectiveness in an applied format is reflective of Giddens' concept of transformative capacity (Loyal & Barnes, 2001). Giddens theorised that the power of an agent to intervene is defined as one's transformative capacity. Effectively, power becomes fundamental to change. However, what does power look like? Is it purely social? Can power simply constitute one's ability to act? Or can power be derived from structural components of context? These types of questions will begin a critical analysis within the discussion chapter to ascertain if, or to what extent power influences RMA engagement processes.

Gough's (1999) concept would align with Emirbayer and Mishe's (1998) concept that human actors do not simply repeat actions routinely, that they invent new options or opportunities which is defined as being an actor's way of continuously changing one's 'temporal orientation'. The temporal orientation addressed by Emirbayer and Mishe (1998) connects to the psychological approach of Albert Bandura (2006) who defines the four core properties of human agency. Those being; intentionality, forethought, reactivity, reflectiveness (Bandura, 2006). When considering these four properties and the literature of Gough (1999) and Lonning (2018), it becomes clear that human agency is affected by personal attributes and the environment in which they seek to act. The psychological realm of human agency conceptualised by Bandura (2006) is toward the outside of the scope in which this research will be undertaken.

The importance of context becomes apparent when considering Gough's (1999) research. Temporal orientation can be used to connect to the concept of context defined by Healey (2010) that emphasises its fluidity; context can evolve, and much like Gough's (1999) concept, so can human actors' orientation.

3.3 Perspective

When seeking to define human agency, the literature shows that behind it is the psychological realm that researchers the foundations of cognitive functionality. Subsequently, perspective becomes a fundamental component of human agency (Muhlberger, 2005). As noted, such perspectives are derived from one's beliefs, identity and values. When exercising human agency, perspectives on certain matters may restrict people in how they act or do not act. The term bounded rationality, theorised by Herbert Simon (1982) would represent how one's ability to act is restricted by one's ability to think in a particular context with structure forces, for example, time constraints or limited knowledge. Muhlberger (2005) argues that such actions would reflect one's identities in regard to the subject matter, which may result in perspectives being different from one's private and one's public identity, social positioning, or if they are part of a group. Muhlberger's (2005) argument of different perspectives being dependent upon social positioning connects with Tewdwr-Jones and Lord (2009). The connect lies within social positioning and how Tewdwr-Jones and Lord (2009) consider those with higher social positions to be more successful agents.

3.4 Political Agency

One's ability to act is argued by Muhlberger (2005) in regard to political engagement. Muhlberger argues that agency, when considering political engagement, can be disturbed through people not having the skill, motivation, or type of identity. Thus, one's political agency is determined. Aligning with Muhlberger's 'political agency' epistemology is Noel Gough's (1999) study on de-constructing human agency. Gough (1999) determined that the way people react within a political realm would be dependent upon the confidence they have in themselves to be social agents.

A question that is left unanswered is in regard to Gough's (1999) 'temporal orientation' concept (that aligned with Emirbayer and Mishe's (1998)), that questions how time changes one's values and opinions and if those are expressed through political agency. Healey (2010) in this instance would disregard time when deconstructing the structural context. However, if applied in a broad context of an individual submitting against a proposed Long Term Plan, (LTP) time could be used to show how an individual could evolve and their actions could represent a new confidence in themselves as an agent. For example, LTP are prepared every 10 years under the Local Government Act 2002 (LGA). Councils call for public submissions to influence the outcome of the LTP. If one were to not submit on an LTP in 2010, but then decide to submit in 2020, would that change in time not be considered to show that one's political agency has developed, be it in skill or motivation?

However, the ability for one to influence policy is something that appears unresearched when applied to the RMA at district plan level, at least with respect to lifestyle blocks in New Zealand.

3.5 The Three Components of Human Agency

In application, the theory of political agency can be executed individually, collectively or by proxy. These three components of human agency can be simply illustrated through submissions on an LTP. Individual agency would consist of an individual acting alone (Gregory, Johnston, Pratt, Watts, & Whatmore, 2009). Collective agency would be two or more actors acting with shared beliefs of a desired outcome (Snow & Corrigan-Brown, 2015). Whilst proxy agency would entail one engaging an individual to act on their behalf who has the required knowledge (Bandura, 2006). The three forms of human agency are analysed in the following sections of this literature review.

3.5.1 Individual Agency

Human agency defines that individual agency is when one acts alone (Gregory, Johnston, Pratt, Watts, & Whatmore, 2009). However, individual actors can still seek the same desired outcomes but not act collectively. An individual's actions are considered by Bandura (2018) to be restricted to the "spheres of activity one can control themselves" (p. 131). Individual agency was derived from liberal ideologies associated with capitalism and acting one's thoughts and motives. However, one who lacks agency is considered to be automata in society (Loyal & Barnes, 2001). Thus, one's existence is dictated by structure. What is overlooked by Loyal and Barnes is that structural components may not allow one to act as an individual in a certain context.

In application, it would become apparent that the 'spheres of activity' is a reference to context that one seeks to act and is able to act within, thus the structure allows one to act. Within the context of the RMA, does it allow for individuals to act or simply interpret technical dialogue and definitions? With consideration to Giddens' transformative capacity theory, does acting as an individual change the value of one's actions?

3.5.2 Collective Agency

Collective agency can be exercised when there is a shared belief in a desired outcome between two or more sets of actors (Snow & Corrigall-Brown, 2015). Collective agency would reflect a shared identity which would align with one's beliefs, identities, values and experiences as discussed by Muhlberger (2005) and Bandura (2006).

Identity is considered to be the foundations of forming a common interest. Collective identity can be interpreted as a shared sense of 'we' over a common interest (Snow & Corrigall-Brown, 2015). The product of collective agency is considered by Snow and Corrigall-Brown (2015) to be a powerful stimulus of change and action that in turn can function to pioneer other actors within similar areas of interest. Thus, it is considered to be an evolving process rather than just the belonging of existing collective social identities. In application, collective agency can be portrayed as being more powerful with both benefits of numbers in influencing (if legislation considered each and every action or submission as equal), as well as increased economic power in comparison to acting individually. Thus, acting in unity for a common purpose is illustrated by Lonning (2018) and Chen et al. (2020) as being more powerful than individual agency. However, their research was undertaken in areas where impoverished communities were displaced by multinational corporations. In these situations, both Lonning (2018) and Chen et al. (2020) deconstructed the context which allowed insight into how economic, governmental and legislative circumstances restricted how certain agents were able to act. Accordingly, in the context of lifestyle allotments in New Zealand, do owners have the ability to act within the context of the RMA, or is one's agency restricted by the normative assumptions of rural identity promoted, perhaps collectively, by traditional farmers?

3.5.3 Proxy Agency

Proxy agency is defined as being the third form of agency that is a result of social intervention. One would influence others to act on their behalf who have the desired knowledge or resources (Bandura, 2006).

Prior to Bandura's (2006) theory, Thomas Hobbes theorised that an actor, engaged to act in proxy, becomes an artificial person as they are not acting upon their own thoughts but representing someone else's (Oxford University Press, 1996). Those who they represent are referred to as a 'natural person'. A 'natural person' is interpreted to be an individual who does not seek to act with

their own words (Macpherson, 2010). Thus, Hobbes theorises that a proxy agent as an artificial person who is acting on behalf of a natural person. The connection between Bandura's and Hobbes' theories lies within the purpose of proxy agency which, in essence, requires an agent to express a 'natural persons' opinion.

Bandura theorises that one would seek to influence the agent to achieve their desired outcome. Simplified in application, this could entail one employing a builder to build their house as they have the knowledge required to build the house but the builder will seek to achieve the clients desired outcome. However, does the profession of planning allow for proxy agency to truly occur or does a planner have an ethical obligation to achieve the purposes of the RMA? Likewise, what role does the ethical code of the New Zealand Planning Institute play in a planner's ability to exercise agency?

3.6 Summary

Hayek (1994) and Healey (2010) established that there is a need for provision to control the context in which the market operates. In a planning context, those controls consist of spatial and resource management plans. In a New Zealand planning context, District Plans are created through processes set out under the RMA and applied over a spatial layer.

At a broad scale, a significant gap in the literature surrounds the relationship between human agency and engagement processes under the RMA. More specifically, the connection of human agency and lifestyle allotment subdivision provisions is indisputably an unresearched area. Furthermore, whilst the literature recognises the importance of controlling the free market with legislation, do the processes required to engage under the RMA provide insight into what type of agency is required in order to act? Do complex and or technical characteristics of legislative documents restrict the ability for one to act as an individual? Is proxy agency required, or is it more effective to act collectively?

Throughout all, it is concluded that human agency theory provides a sound theoretical base for research to explore the ability for actors to influence RMA processes in relation to the creation of District Plan provisions and resource consent applications for lifestyle allotment subdivision which in turn (re)shape places in rural New Zealand.

Chapter 4

Methodology

The key questions driving this research focus attention on the relationship between human agency and the structures of the formal plan-making processes in the residentialisation of rural land. In order to achieve this, I shall explore the scope in which human actors can influence District Plan Provisions throughout the processes outlined in the RMA. District Plans provides the rules that are anticipated to achieve desired outcomes in regard to lifestyle allotments. Consequently, there is a particular focus on the process through which District Plans are prepared, and the outcomes of decisions undertaken under the provisions (i.e. resource consent decisions). The approach examined two operative District Plans to allow those processes to be compared and contrasted, with particular attention to, specifically, who are the actors and to what extent does human agency theory influence the outcome of decisions on lifestyle allotments.

This Chapter sets out the reasons for the choice of the two Districts that form the case studies and basis for choosing the specific zones and resource consents. The means of gathering material to analyse and the methods to analysis are described. To conclude, limitations of the research report are dealt with.

As discussed in Chapter 2, District Plans are implemented under the RMA 1991 and provide spatial planning zones which in the New Zealand rural context, are commonly named rural productive, rural residential, forestry, or rural lifestyle. The focus of this research is on how human agency is exercised through that process to produce the rural settlement outcomes. As originally structured, the RMA 1991 is supposedly effects-based (Rennie, 2011). In terms of subdivision, such an approach would consider what effects are anticipated by the District Plan then assess the difference between the baseline environment and the resultant environment. Henceforth, names like rural residential are more means of communicating what one might find, such as a predominantly rural area with some residences in it at varying degrees of density and clustering depending on the cumulative effects of the rules in the plan. The plan rules that resulted in this might be about amenity values, reducing the effects of transport, allowing greater levels of odour or noise commensurate with rural activities, or the encroachment on open space or views. Taken together, such rules might constrain or prevent activities (like clusters of housing) that would be likely to lead to reverse sensitivity issues emerging.

More recently in November 2019, the government has released a National Planning Standard (2019) that requires a more activities-based approach to zoning. What this means is that there are certain definitions that must be used in all plans. A National Policy Statement on Urban Development (2020) that also requires increased urban density and ancillary rules, such as abolishing car parking space requirement has also been released. The NPS on Urban Development is unlikely to have affected many plans as yet due to only being released in 2020. Similarly, the National Planning Standard has yet to be fully implemented and plans using the standard are likely to still be in their plan making process. Taken together and in the context of this dissertation, it was decided to focus on plans that were made before these standards and Policy existed as the outcomes would be more visible.

The importance of a District Plans objectives, policies, rules and methods are the key to determining the nature of what requires a resource consent and how an application is likely to be considered. Therefore, the methods used in this dissertation require a detailed examination of the objectives, policies and rules in the chosen district plans, an understanding of how they came to be, and how they have been implemented. This requires methods that enable the exploration of the historical events (the plan-making and consent granting). That lead to the adoption of document analysis to review the ways in which the District Plans were influenced by individuals (if at all) during the plan making process, and the influential evidence provided during the consent granting process. Document analysis is considered to complement other qualitative methodologies by enabling the detailed study of certain phenomenon (Bowen, 2009; Stake 1995). The approach provides a means to identify whose views were influential in the planning processes that led to particular spatial outcomes. The nature of such research requires a systematic approach to analysing documents, but one that enables the nuances of the context to be understood, which cannot be achieved through a quantitative approach. This document analysis is supplemented by interviews with key informants involved in these processes to ensure triangulation is achieved through mixed methods of qualitative analysis. Throughout the document analysis, human agency theory will be applied as a tool to deconstruct the context and enable actions or inactions of agents to be disclosed.

Prior to undertaking the case study analysis, a preliminary investigation was required to outline and examine the RMA 1991 in terms of how planning provisions are prepared and how decisions are made on resource consents for subdivision. Following this, two councils were chosen to explore further. The criteria used to choose the councils was which Councils share the same Regional Council and consequently have the same Regional Policy Statements, and Land and Water Regional Plans to comply with and are similar in geographical contexts. An additional preference was to be far from the

influence of the Christchurch metropolitan area as proximity and access to that very large centre of population was considered to create distortions in the analysis due to the number of divergent influences present. The Mackenzie District Council and Timaru District Council were the two selected Councils, an additional attraction being that they were two Councils that were familiar to me.

In this regard, it is important to clarify my relationship with the research. I have been employed as a planner at Milward Finlay Lobb Limited (MFL) in the private sector operating in South Canterbury for 2.5 years preparing resource consent applications to both Councils. I was previously employed by the Timaru District Council for 18 months as a processing planner. As I grew up in Timaru, I have noticed the residentialisation of rural land and became interested in the process in which this was occurring. This was a key factor in my choice of research topic. As a result of my work, I have become familiar with some staff and this facilitated my access to information. However, I deliberately reflected on the information received and my approach to seek to reduce any personal bias I may bring to the process. Prior to completing my final write up of this research, I presented my results to the Canterbury Branch of NZPI at an event in Christchurch that included several experienced planners and no significant problems with my approach or analysis were identified. Consequently, I am therefore confident in the robustness of my methods and their application.

4.1 Data Selection

As outlined in the Context chapter, Schedule 1 of the RMA details how District Plans are prepared and the processes of notification involved which provide engagement opportunities. In terms of resource consents, Part 6 of the RMA was examined, with particular consideration given to Section 95 regarding notification status and differing engagement options (i.e. limited notification where a planner selects those who can engage, or public notification where anyone can engage or act).

By examining the context in which actors can act, it highlighted the avenues to consider during the applied context analysis of documents associated with the District Plan preparation and resource consent decisions.

Both Districts were analysed using geospatial imagery, provided online by both Councils and Canterbury Maps, to see if there were zones and areas that provided for rural lifestyle allotments

and where the residentialisation of rural areas had occurred during the life of the operative district plans. Upon identifying relevant spatial zones, the subdivision provisions of the District Plans were analysed to establish what zones were able to achieve in terms of lifestyle allotments. The geographical area in the Timaru District was within the Hadlow and Levels Plains which were in close proximity to Timaru and Pleasant Point. In the Mackenzie District, the geographical area was Ashwick Flat. The zones, and geographical areas guided the selection of four resource consent decisions from each Council.

The data from the District Plan (DP) preparation consisted of submission summaries, recommendation reports prepared by Council planning officers on behalf of Council, Council meeting minutes and overall summary reports. These documents provided a concise record of all submissions made by the public on the respective DP with corresponding responses from Council planning officers or authors. This exposed who was submitting and acting in favour or opposition to proposed provisions. Likewise, the responses, as well as Council meeting minutes, enabled the decision-making means to be analysed with aspects that were not formally submitted by the public being discussed.

There were four resource consent applications and decisions requested from both the Timaru District Council and Mackenzie District Council, thus a total of eight. The eight resource consent applications and decisions for lifestyle allotment subdivision were selected to represent how provisions are implemented and their outcomes. Of the eight resource consents, four resource consents were each requested from Timaru District Council Team Leader Nathan Hole and Mackenzie District Council Planning Manager Ann Rodgers. It was requested that the documents were consistent within the category of selected zones, areas within zones, and create one or more lifestyle allotment(s).

The small sample size of applications sought to provide me with a breadth of applicants and decision makers as I was unaware how much documentation would be provided. For example, there would be significantly more detail if an application was publicly or limited notified. Therefore, logistical constraints, such as the uncertainty of documentation detail and timeframes of the research, resulted in only eight decisions being considered necessary. Upon reflection, given the large amount of data from both Councils in terms of the District Plan preparation documents, analysing a larger amount would have been out of the scope of the research. The documents requested and provided by both Councils clearly outlined who acted on the processes within the context of the RMA.

4.2 Data Collection of District Plan Preparation Documents

All information was requested via email through Nathan Hole from Timaru District Council and Ann Rodgers from Mackenzie District Council. The information was not requested via the Local Government Official Information and Meetings Act 1987 as I knew both Council Planning officers from practicing in the profession. Such requests do fall under the provisions of the Act, but if information is requested outside of the formal process it requires less internal formality and processes to respond and, hence, is a more empathetic way to request information. This was more efficient and maintained relationships.

In terms of Timaru District Plan data collection, I was originally quoted by Senior Planner, Megan Geng for the data at \$170 per hour and estimated it would take 6 – 7 hours to go through all of the documents and provide me with the relevant data. This was well above the \$500.00 budget of the research and I opted to go to Timaru and undertake the data collection myself. The data collection was undertaken at the Timaru District Council on the 14th of August 2020. I was seated in a meeting room and had 10 boxes to go through at a time. These were delivered by Council staff. In total, I went through approximately 100 boxes which were not clearly labelled. I regularly had the original documents and scanned documents to skim over in different boxes. I was told by Council planning staff that there would be a delay in getting the data scanned to me and it would be at a cost. I decided, instead of requesting scans of relevant documents, to take photos of each page that was relevant to my research. Figure 2 provides an example of the photos taken during the data collection. It took approximately four hours to complete the data collection at Timaru District Council.

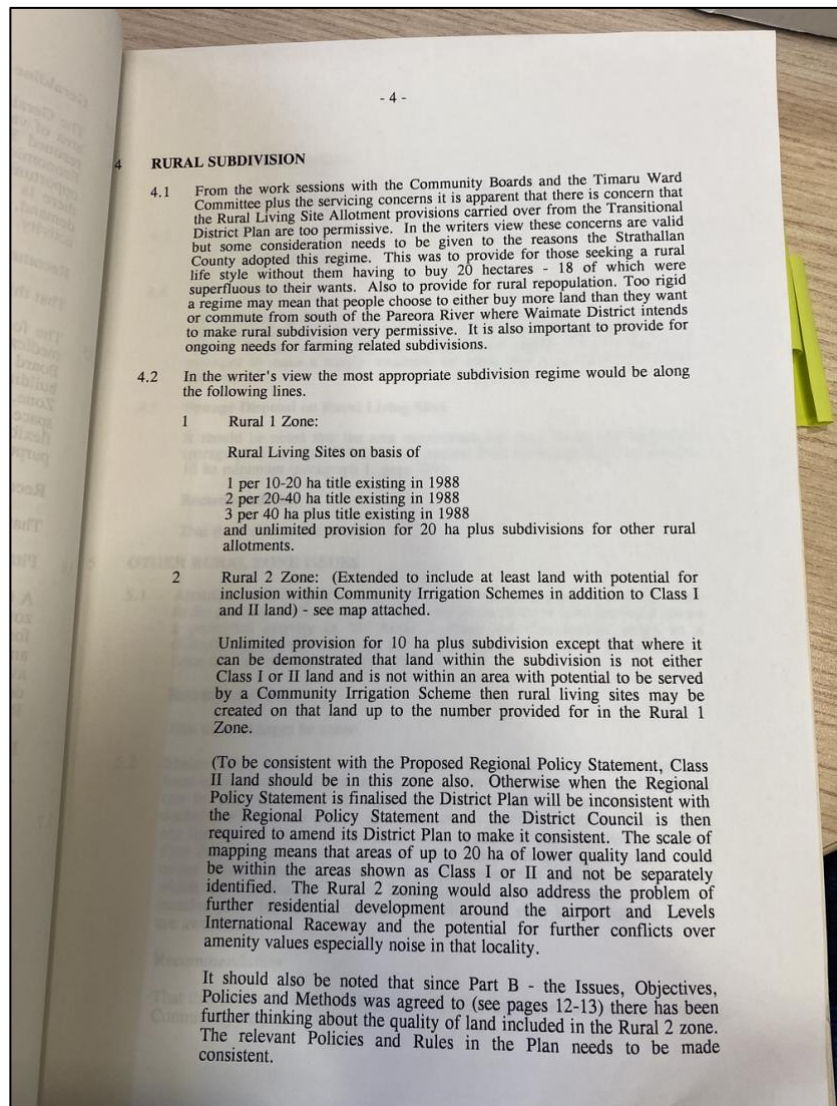


Figure 2 A photograph taken during data collection at the Timaru District Council.

Upon reflection, photocopying the documents would have been very impractical as they were historic documents and not easily dismantled into individual sheets of paper. My work experience at the Timaru District Council between 2016 and 2018 made it easier when looking through the documents as I was familiar with the Operative District Plan provisions. However I found it difficult not to continue reading in depth and simply take photos of the relevant sections as it was interesting to see the original draft plans. The majority of the data was found in the first 5 boxes I reviewed.

In contrast, with the Mackenzie District Council, I initially sought information from the District Planning Manager, Ann Rodgers who said it was very unlikely that the information I had requested could be provided due to the storage issues and nobody knowing where it would be located.

However, an ex-Council Planning Officer Aaron Hakkaart was re-employed during the process and was able to help find the documents and sent the submissions summary reports through promptly with no charge.

With both the sets of data received from Council, I used reflective reading for document analysis. This took the form of an initial skim read over the data to highlight key points or areas that were applicable to my research. This enabled identification of key players through the ways in which their views were picked up and carried forward in the documents. This also enabled a thematic analysis to occur. In particular, thematic analysis was used to cluster the large quantity of DP submissions that were of similar themes for the Timaru District Plan.

4.3 Data Collection of Resource Consent Documents

Documentation was requested from Councils that sought application and decision reports that met the criteria of being discretionary or non-complying activity status and create one or more lifestyle allotments. Initially, discretionary and non-complying activity status were requested, and as outlined in Chapter 2, the decision of the application is not predetermined as with controlled activities. However, upon discussion with both Council planning officers, the majority of applications, particularly in the Mackenzie District Council, were for controlled activities.

Eight resource consents were selected (four from each of the Timaru District Council and Mackenzie District Council) to be analysed through the theory of human agency. The resource consents were signed off by a selection of individuals exercising delegated authority, rather than just one District Planning Manager. The resource consents from Mackenzie District Council were selected at random in the sample areas from Council planning staff. The resource consents from the Timaru District Council were guided by my knowledge of the District from experiences gained in the public and private sector. Those sample areas are within the Rural 1 Zone in Timaru District Council and the Rural Zone (outside of the Mackenzie Basin Subzone) in the Mackenzie District Council.

When initial documentation was requested from Timaru District Council they were unable to provide the subdivision applications that matched the criteria as they did not have capacity for spending time on finding them. I then had to use local knowledge from my work experience at the Council and the

private sector to list 6 different applications. I then selected 4 of the applications as some did not have the full paper work with them and I was still requiring the correct scanning of some documentation. For example, I was sent a Change of Condition Decision Report rather than the original Decision Report.

After initial conversations with a planner at Mackenzie District Council, it was established that the majority of applications were controlled activities or were prepared by MFL where I am currently employed. The planner at Mackenzie District Council then sent me through what they thought were the best suited original applications and decisions for my research. However, many of these were missing decisions and one was still being processed. There was also a subdivision with amalgamation so the lifestyle allotment was amalgamated to a larger rural site, thus the resultant record of title was much larger than a lifestyle allotment. It resulted in numerous phone calls to clarify and explain what I required as I only had three full decisions. Council then had issues with the final application and decision to send me as the majority of consents received by Council for lifestyle allotment subdivision were prepared by MFL. The final consent they sent was from MFL as I explained there is no conflict of interest as I did not prepare the application and the research is being undertaken ethically and in an unbiased manner.

It is important to note that all of the eight applications were granted. It would perhaps be expected that some applications would be declined in the profession, however the quantity of declines is generally extremely low, based in the Ministry for the Environment report RMA Trends in RMA Implementation released for the years of 2014 – 2019 (Ministry for the Environment, 2020). In 2019 for example, there were 35,434 consents granted and only 105 declined nationally. However, there were 633 that were withdrawn. In practise, the number of withdrawn applications may illustrate those applications where Council's make their initial assessment and provide informed feedback to the application about the likelihood of granting their application. From my experience in the profession, calling the applicants to inform them of the likelihood of their application being declined at an early stage saved the applicant money and the Council hours of processing. Thus, whilst the data only has granted applications, given the low percentage of declined consents and the small sample size, it would not be anticipated to have a declined decision.

4.4 Semi-Structured Interviews

In terms of triangulation, in order to gain fundamental information that is historic to certain Councils or not clearly documented, interviews were undertaken with key informants Mark Geddes, Nathan Hole and Patricia Harte.

Mark Geddes is the current Timaru District Council Planning Manager and has worked as a policy planner at Mackenzie District Council prior to this. The questions prepared for Mark Geddes reflected those of the current provisions, their outcomes and his view on the ideal provisions. The reason for interviewing Mr Geddes was due to his position held at Timaru District Council and to gain information from his knowledge of the Timaru District Plan. Nathan Hole is the previous Mackenzie District Council Planning Manager and undertook Plan Change 13 which implemented numerous planning provisions in relation to subdivision. The questions prepared for Mr Hole reflected Plan Change 13 and his experiences of the outcome of provisions. The reason for interviewing Mr Hole was due to his experience at Mackenzie District Council, which spanned approximately 10 years, and to gain information about the purpose of Plan Change 13. Patricia Harte was the consultant engaged to write the MDP and has continued to process resource consent decisions for the Mackenzie District Council. The questions prepared for Patricia Harte reflected her involvement in the DP preparation process and memory of key actors involved. The reason for interviewing Ms Harte was to gain an insight into the process and key actors involved in the Mackenzie District Plan preparation.

Due to the Covid-19 alert levels and social distancing requirements imposed by the Government, I undertook the interviews with Mark Geddes and Nathan Hole via Zoom on 11 September 2020, and in person (on 11 September 2020) with Patricia Harte. The interview questions are outlined in Appendix A of this research report. It became apparent after the interviews, that doing the interview with Ms Harte in person was much easier to guide and shape as I could read her body language as to when she was finished speaking or wanted to go into more detail. I was fortunate enough to know both Mr Geddes and Mr Hole from working in the profession. If I did not know the two interviewees on a professional level prior to undertaking the interview, I would anticipate the use of telephone to be much more difficult with engaging in a semi-structure interview. To a certain extent, this was reflective of the length of interviews with Mr Geddes and Mr Hole being approximately 30 minutes whilst the interview with Ms Harte took approximately 40 minutes.

4.5 Document Analysis and Human Agency Theory

The assessments required under the RMA in a New Zealand context with preparing planning provisions and also with processing a resource consent application, need by law to be well documented. Thus, document analysis was selected to ensure such assessments are thoroughly examined, in an efficient and cost-effective manner (Bowen, 2009). A qualitative analysis of those assessments was used to enable the detail, that Healey (2010) argues might otherwise be lost over time, to in fact become prominent. Accordingly, the correct analytical tool should cope with the limited time available for the research.

Furthermore, it would be ill-considered to overlook what actually defines a lifestyle allotment prior to undertaking the qualitative research. This was undertaken as part of the context section of this research dissertation. The detailed documentation from Council records are the foundation, providing context and structure for the findings.

By having two modes of data, as well as using both the Timaru District Council and Mackenzie District Council, the findings are supported across different data sets to reduce the bias that becomes more prominent when using a single set of data (Bowen, 2009). Bowen (2009) warns against bias when selecting the specific documents to be analysed. Bias could be achieved by selecting specific documents, or a limited scope of documents, in order to favour a particular conclusion. Consequently, I ensured that I disclosed my workplace of MFL to both Councils and in the case of the Timaru District Council, I originally sought their selection of applications. Upon my own selection, I made sure that there was only one prepared by MFL from each Council.

4.6 Limitations

As the MDC selected all of the documentary data, it restricted my ability to make sure all the information was provided for the DP preparation process. However, the submission summaries received were detailed and I sought to mitigate any loss of possible data by a detailed interview with the District Plan's author Patricia Harte. Consideration was given to interviewing further people involved at the time, however, given the time that has passed since the plans were made, it appeared unlikely that other relevant interviewees would be readily found.

4.7 Summary

The methodology enabled the use of knowledge gained during the Context chapter to identify the most relevant rural zone in the respective Districts. The two zones were then used to request data from both Council's and guide the selection of eight resource consent applications and decisions. The document analysis was undertaken in two parts, the first being the data relating to the DP preparation, the second being the outcomes of those rules through resource consents. The results of the document analysis enabled human agency theory to be applied within the Discussion chapter.

Chapter 5

Results

The results were derived from the data by applying the method of document analysis which was guided by human agency theory. There were two zones selected, one from each region. These consist of the Rural 1 Zone in the Timaru District Council and the Rural Zone in the Mackenzie District. The results chapter consists of two parts of analysis, the first being of the District Plan preparation process, and the second being the resource consent decision making process. The District Plan submissions in the Timaru District were more direct as the proposed provisions outlined exact allotment areas. The submission in the Mackenzie District were more reflective of that of key stakeholders such as the Department of Conservation as the proposed provisions adopted a more effects-based approach.

5.1 Part 6 of the Resource Management Act 1991

The RMA provides the consent authority, generally a planning officer, steps in which the notification status of an application is derived under Section 95A and 95B. Whilst the majority of the steps are seeing if National Environmental Standards or other legislation requires public notification, a significant component of the Section 95A and 95B decision is the assessment of adverse effects (AEE) on the environment. The AEE is provided by the applicant and assessed (essentially audited) by a Council planning officer. If the officer's assessment of the applicant's AEE determines the adverse effects to be more than minor in accordance with Section 95E of the RMA, then the notification status is determined. If those affects are related to the wider public, or if those affects are localised to a certain group of people, then the application will be either publicly or limited notified respectively. Limited notified means that the Council Officer determines who are likely to be affected and notifies only those people and they are the only ones able to make submissions. Public notification means anyone can make a submissions, provided it is not on the grounds of trade competition. Vital to such determination of effects is the processing planner who has the ability to determine the notification status which is guided by the District Plan objectives, policies and provisions.

5.2 Methods of Achieving Lifestyle Allotments

The two maps attached as Appendix B illustrate the broad zoning of both the Timaru and Mackenzie Districts. Lifestyle allotments were defined in Chapter 2 which specified the requirements to research both subject District Plans. Based on my reading of the legislation and plans I prepared a diagram showing the methods of achieving a Rural Lifestyle Allotment through Subdivision in the Timaru District Plan (Figure 3).

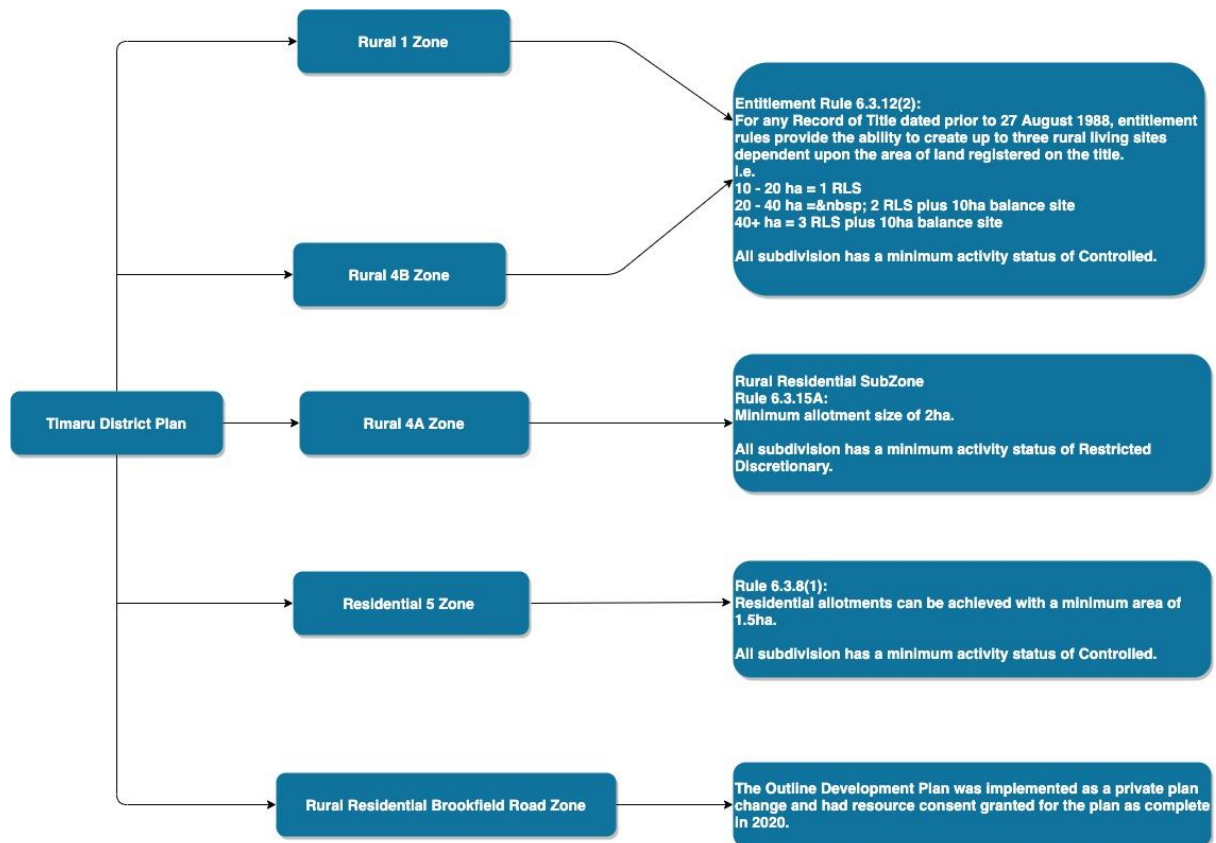


Figure 3 The different routes of achieving a rural lifestyle allotment in the relevant zones of the Timaru District Plan.

(Source: Author)

Similarly, the methods of Achieving a Rural Lifestyle Allotment through Subdivision in the Mackenzie District Plan are outlined in Figure 4:

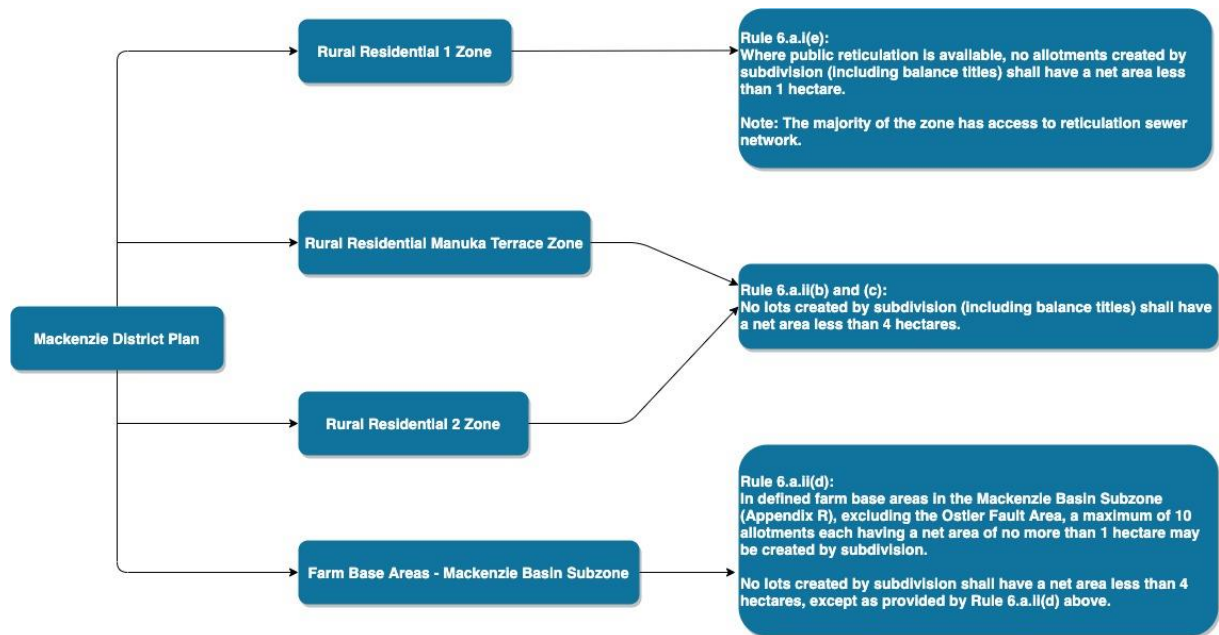


Figure 4 The different routes of achieving a rural lifestyle allotment in the relevant zones of the Mackenzie District Plan.

(Source: Author)

It becomes apparent with the exercise undertaken above that numerous zones are designated to simply accommodate rural lifestyle allotment subdivision. However, when zoning such land to be rural residential, the outcome significantly reduces the rural amenity values and consequently do not align with the definitions analysed under the Context chapter. To highlight the issue, aerial imagery can be used to illustrate the outcome environment of the Rural Residential Manuka Terrace Zone in the MDP (Figure 5).

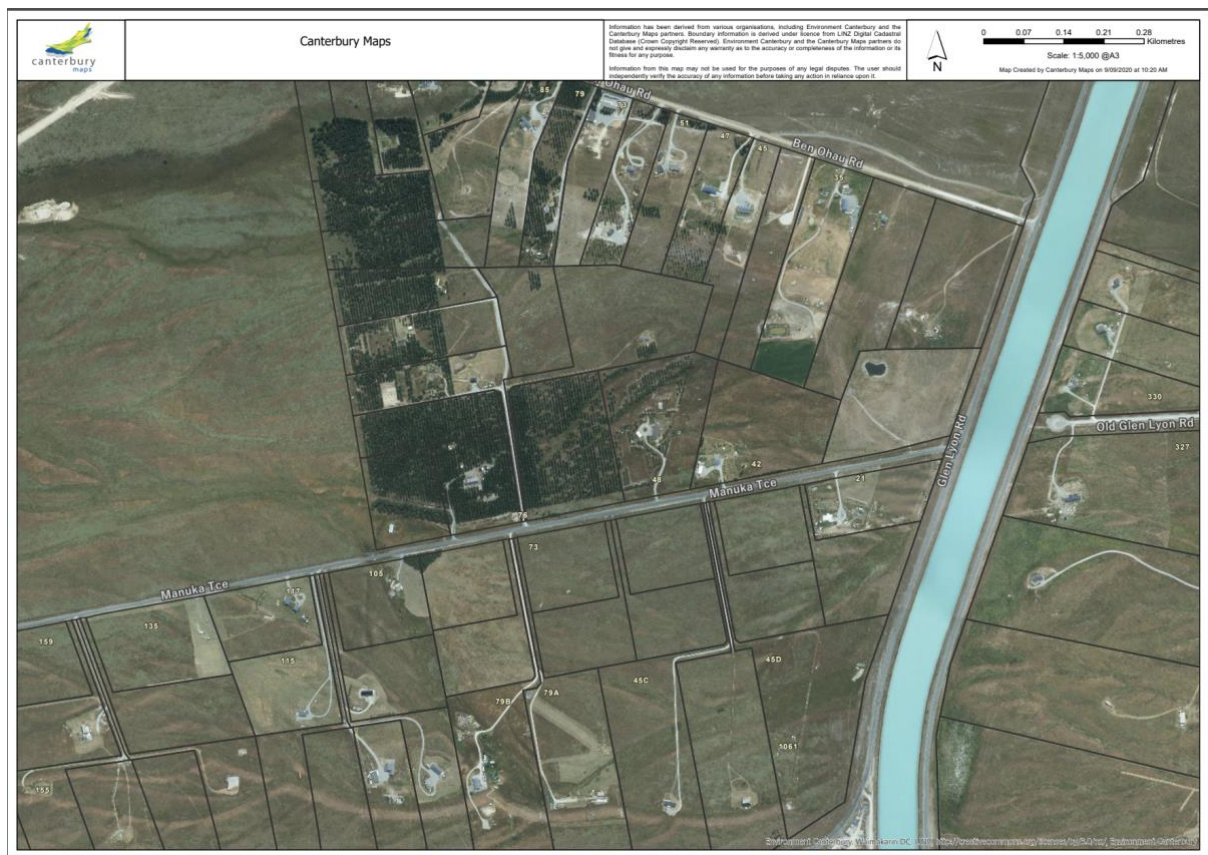


Figure 5 An aerial image overlooking the Rural Residential Manuka Terrace Zone in the Mackenzie District Council.

Figure 5 shows clustering of rural lifestyle allotments in a zone which is specifically provisioned to create such an environment. The use of these zones was prevalent in both District Plans, however this is not what the literature used to defined lifestyle allotments concluded. Thus, in order to align with the effects-based approach for the RMA 1991, broad zonings were selected.

In contrast to the zones purposely implemented for lifestyle or rural residential allotments, the Rural 1 and Rural Zones were observed by the aerial imagery on Canterbury Maps to have lifestyle allotments located within rural production areas and additionally, were not zoned specifically for lifestyle allotment purposes. The Objectives and Policies helped to guide the selection of zones, along with local knowledge. In both zones, lifestyle allotments are not specifically anticipated as the dominant land use. As lifestyle allotments are not anticipated to dominate the land use character of the Rural 1 and Rural Zones, the definition of lifestyle allotments is considered to be better achieved

due to the surrounding rural character and considered under an effects-based approach. Therefore, the two broad zones that were selected are the Rural 1 and Rural Zones.

Due to their area spanning the length of their respective Districts, sample areas were selected. Sample areas for the purposes of data selection for resource consent decisions were required to be in close proximity to urban areas in the Timaru District Council, those being Timaru, Pleasant Point and Temuka, and in the Mackenzie District Council, the urban area being Fairlie and its surrounding area of Ashwhick Flat. Thus, ensuring one of the principal themes of lifestyle allotments is achieved which reflects the dependency on income being associated with urban areas whilst being located in an area of rural character. The broad sample areas of the Rural 1 and Rural Zones are outlined in Appendix B.

5.3 Preparation of the Timaru District Plan

The draft TDP was prepared in response to the RMA 1991. Over the period of 1991 to 1995, the Timaru District Council undertook the Timaru District Plan (TDP) preparation process. The Proposed TDP was publicly notified on 10 October 1995, with the final approval on March 1997. The TDP was eventually deemed operative with the Timaru District Council common seal on 22 February 2005. The reason for delay in which the District Plan become operative was not found, however presumed to be due to matters surrounding the hearing process of other matters. Prior to October 1995, the preparation consisted of the Resource Planning and Regulation Committee overseeing workshops and recommendations on draft chapters of the Draft TDP. The Draft TDP was commented on by Councillors and Community Boards. Those comments on the Draft TDP then formed the Proposed TDP that the public responded to during the formal submission process. The submissions in regard to the subdivision chapter, specifically rural lifestyle allotments, outlined the context in which the operative provisions were created.

The data analysed in the Volume 1 Draft TDP did not differentiate the Rural 1 and Rural 2 Zone subdivision provisions, thus broad subdivision provisions were drafted that encompassed a wide range of landscapes. The segregating element between the two zones is that the Rural 2 Zone is considered to be Class I and II soils (i.e. Class I soils are more versatile and arable than Class II) under the Canterbury Regional Council, whilst the Rural 1 Zone is a broad rural zone that is characterised by primary production activity and other forms of economic activity.

The initial subdivision provisions from the Volume 1 Draft TDP, released 2nd June 1995, for the Rural 1 and 2 Zones are outlined in Table 1.

Table 1 The Volume 1 Draft TDP provisions for Rural Subdivision Rural 1 and 2 Zones.

| Rural 1 and 2 Zone Provisions | |
|--------------------------------------|--|
| 1 | Allotments may be subdivided in each of the following circumstances: For any existing certificate of title existing prior to 27 August 1988 or |
| 2 | For any title issues subsequent to 27 August 1988 where it can be demonstrated that the allotment entitlement in terms of criterion (d) below in respect of the land comprised in the title which existed on 27 August 1988, has not been exceeded. |
| a) | The title has an area in excess of 4 hectares. |
| b) | The area of the allotment being created is not less than 1,000 sqm and is not greater than 8,000 sqm: |
| i) | An area greater than 8000 sqm shall be allowed only where it is necessary to ensure the proper disposal of liquid wastes, and/or, where domestic water is to be drawn from ground water, the area of the allotment is required to be increased to provide for potable water supply that is not contaminated by effluent disposal on the same site. |
| c) | The allotment has frontage of not less than 20 metres to a formed legal road or a road to be constructed by the subdivider: |
| i) | Council may allow the subdivision of a rear site no exceeding 8000 sqm or such larger area as permitted under (b)(i) above, (exclusive of the access strip) where provision is made for an access strip having frontage of a minimum width of 6 metres, to a formed legal road, or a road to be constructed by the subdivider. |
| d) | The number of new allotments allowed shall be calculated according to the following table: |
| | More than 5 hectares but not more than 20 hectares: <i>1 new allotment</i> |
| | More than 20 hectares but not more than 40 hectares: <i>2 new allotments</i> |
| | More than 40 hectares but not more than 60 hectares: <i>3 new allotments</i> |
| | More than 60 hectares: <i>4 new allotments</i> |
| | But in no case shall the total number of allotments created exceed four plus the original allotment. |
| e) | A building area of not more than 400 sqm is to be shown within each allotment. |

These draft subdivision provisions for the Rural 1 and 2 Zones. In order to achieve a lifestyle allotment mean that, if the record of title was dated prior to 27 August 1988, entitlements to certain allotment sizes are derived from the total area of the site as of, or prior to 27 August 1988. For example, if you had a record of title dated 10 August 1988 with an area of 25 hectares on the title, then you would be entitled to two new allotments. The entitlements in this drafted provision allows for two new allotments, plus the balance land (that being the remaining land). The area of the two new allotments must be between 1,000sq.m and 8,000sq.m, unless land is required for wastewater purposes. The interpretation is very complex and took me a great length of time whilst working at the Timaru District Council to understand the provisions.

The Volume 1 Draft TDP was sent to the community boards in May 1995 for their feedback and recommendations. The Council meeting minutes reviewed during document analysis established that the District had four community boards, those representing the small settlements of Geraldine, Temuka and Pleasant Point and a fourth committee represented the Timaru Ward. The community boards represented the wider communities, including the rural areas. The Council meeting minutes, along with comments from each Community Board provided detail into the initial views of the community board comments and the planning officer's recommendations.

The Geraldine Community Board's comments were received on 4 May 1995, *approximately a month before the Proposed TDP was release*. The board expressed concerns about the provisions for subdividing rural living sites in the Rural 1 Zone only, and recommended the ability to create rural living sites be reduced to the following formula:

All allotments of 10 – 20 hectares may be subdivided to create 1 rural living site.

All allotments of 20 – 40 hectares may be subdivided to create 2 rural living sites.

All allotments of 40 – 60 hectares may be subdivided to create 3 rural living sites.

All allotments of 60+ hectares may be subdivided to create 4 rural living sites.

As part of this recommendation no further subdivision below a minimum of 10 hectares would be possible on the balance areas of these 10ha allotments. In addition, no rural living sites should be located in the Rural 2 Zone.

The above recommendation results in only changing the provisions for the entitlements for record of titles with 60+ hectares along with restricting further subdivision if a balance allotment were to be below 10 hectares in area. Again, for a site with 25 hectares in area, two rural living sites could be achieved but the balance title can be no smaller than 10ha in area. The proposed formula is very complex and has overlooked the clarity required for interpreting the rule. The emphasis is required to be put on the record of title as of 27 August 1988. Therefore, even though one may have a site that is 2000ha in area, the title, at that date, is only entitled to four rural living sites. The interpretation in regard to the date and subsequent entitlements is something that is regularly misinterpreted by the public and an issue I have found when working as a processing planner at Timaru District Council and a consultant explaining the entitlements to clients. Of recent, the *Shirtcliff vs Timaru District Council* [2020] NZEnvC 178 case recognises the difficulty of acting as an individual upon appealing costs to the Environment Court for a decision in which the Shirtcliff's acted without a consultant. The Judge did not consider the required costs to be inappropriate as they were trying to deal with an application that was effectively a technical planning task.

The Temuka Community Board's submission was received on 9 May 1995. The board agreed the with recommendations of the Geraldine Community Board regarding its proposed changes to allotment entitlements and there being no Rural living sites in the Rural 2 Zone.

The Pleasant Point Community Board's submission was received on 11 May 1995. The board members expressed concern at the intensity of subdivision for rural living sites in rural areas of the Timaru District. They recommended that the draft subdivision controls for the Rural 1 and 2 Zones be amended to the following:

One rural living site allotment per title could be taken and that further subdivision of balance areas be limited to a minimum of 10 hectare allotments.

The Pleasant Point Community Board had a general concern for the loss of prime agriculture land on Levels Plains and it was noted that over much of this area the existing irrigation system was being underutilised on allotments used for rural living sites.

The Timaru Ward Committee's submission was received 22 May 1995. The committee raised concern over the loss of rural amenity and high-quality soils. They recommended a 10 hectare minimum allotment provided in the Rural 2 Zone. The committee provided the following two options for subdivision provisions in the Rural 1 Zone:

1. *For all rural allotments a 50 hectare minimum should be provided for which is not subject to any qualifying date;*
2. *If subject to the qualifying date:*
The underlying allotment is less than 20 hectares: 1 rural living site may be taken.
The underlying allotment is 20 hectares or greater: 1 rural living site and one 10 hectare allotment may be taken.

The Council's review of the Community Boards' and Timaru Ward Committee's submissions concluded that, in the Community Boards/Wards views, the District Plan's author (i.e. the Planner Officer) had proposed subdivision provisions that were too permissive. It was the Council's view that the concerns were valid, but consideration needed to be given to the reasons why Strathallan County adopted this regime. Strathallan County was the underlying Council prior to the Timaru District Council which governed the wider area surrounding Timaru Borough Council. Strathallan County merged with other local governing bodies in 1989, including Timaru Borough Council, Temuka Borough Council and Geraldine Borough Council to become the Timaru District Council.

This was to provide for those seeking a rural lifestyle without them having to buy 20 hectares – 18 of which were superfluous to their wants. Also to provide for rural repopulation. Too rigid a regime may mean too that people choose to either buy more land than they want or commute from south of Pareora where Waimate District Council intends to make rural subdivision very permissive. It is also important to provide for ongoing needs for farming related subdivisions.

In response, the Planning Officer's view was expressed in the 'Special Meeting' minutes on 30 May 1995 and the most appropriate subdivision regime is outlined in Table 2.

Table 2 The Timaru Planning Officer's view on the subdivision provisions.

| Zone | Provision | Entitlements |
|---------------------|---|---------------------|
| Rural 1 Zone | <i>10 – 20 ha title existing in 1988</i> | <i>1 RLS</i> |
| | <i>20 – 40 ha title existing in 1988</i> | <i>2 RLS</i> |
| | <i>40 ha plus title existing in 1988</i> | <i>3 RLS</i> |
| Rural 2 Zone | <i>Unlimited provision for 10ha subdivision to protect Class II soils and be consistent with Proposed Regional Policy Statement at the time which is referred to the Context Chapter.</i> | |

Although the Volume 1 Draft TDP was presented to the community boards for recommendations, the Council's 'Special Meeting' minutes, dated 30 May 1995, summarised that due to the significance of the community boards' input to the rural subdivision rules and the constraints surrounding timeframe deadlines, the changes were unable to be made in response to the revised Draft TDP. The Planning Officer had between 22 May 1995 to 2 June 1995 to analyse the submissions from the Community Boards and the Timaru Ward Committee. No revised provisions were released at that point.

Volume 2 of the Draft TDP was then documented where it was recommended by the author that the submissions from the Community Boards and Timaru Ward be kept in mind when reviewing the subdivision provisions.

A new timetable was prepared by Council in June 1995 as the Manager of Planning raised concern over the different options for rural subdivision provisions. The month long consultation process was a significant time constraint which was recognised in the Progress Report and Recommendations on Draft District Plan, which was prepared by a Council Planning Officer and not dated, and given the complex nature of the drafted provision, no consensual resolution was reached. It became apparent that the Council Planning Officer reviewed the subdivision provisions by 2 June 1995 and released two options for Council to decide upon. The two options that were proposed by the Council Planning Officer were the existing/status quo provisions (as per the Volume 1 Draft) and the less permissive regime prepared by the Council's Planning Officer. The Council met on 9 June 1995 to discuss the process and reach decisions on the next steps.

The two options were released to the community boards for further feedback following Council's initial meeting on 2 June 1995. Council then sat on 6 July 1995. In the minutes of the meeting, Councillor Esler reported that the Pleasant Point Community Board favoured the Council Planning

Officer's proposal. Councillor Maxwell reported that the Geraldine Community Board favoured the Council Planning Officer's proposal, with the alteration of 20 ha to 10 ha allotments in terms of minimum allotment size for the Rural 2 Zone. However, Councillor Bowan reported he had had no response from the Temuka Community Board. No feedback was provided from the Timaru Ward Committee.

Council met again on 6 July 1995, the General Manager and Councillor Burdon expressed concern at the further division of the balance land as the Geraldine Community Board proposal did not restrict further subdivision of the balance. The following motion was carried by the Council:

That the balance title can be further subdivided at any time into allotments of not less than 40ha. (Timaru District Council, 1995)

The role of community boards was the subject of the interview with Mr Geddes. As outlined under Section 52 of the Local Government Act 2002, Community Boards advocate for their community. Mr Geddes considered that they understand the people, their environment and the history of it.

Mr Geddes said that "the Council can defer to their opinion on matters, you see a lot now in planning that it is getting directed by national policy... less scope for political input, guided by experts". For example, Mr Geddes is currently overseeing the District Plan Review at Timaru District Council and if there was some discretion from community boards, Council would consult, but "it is more of a keeping them informed".

Upon reflection on the past, Mr Geddes recognised that it has not always been like this. Mr Geddes commented that prior to having national policy guiding planning "it resulted in the first generation plans with things being a lot more arbitrary, a lot more value based and reliance on elected members input to decide". Mr Geddes opinion was that "what you would have found is Council putting more weight on what their local elected members want, instead of what their officers thought".

The Proposed Timaru District Plan was then publicly notified on 7 October 1995, this being the time when written submissions from the public can be made. My summary of the relevant public submissions is outlined in Table 3.

Table 3 A summary of public submissions on the Proposed Timaru District Plan.

| Submitter | Recommendation |
|---|--|
| <i>Air Nelson, Chief Executive on behalf of the Timaru District Council</i> | Minimum allotment size be 40ha in close proximity to the Timaru Airport |
| <i>Church Property Trustees, Ministry of Agriculture and Forestry Policy</i> | Classify subdivision not meeting 10ha or minimum allotment sizes to be a discretionary activity. |
| <i>B T Clemens, D and A Cosgrove</i> | Reduce minimum area as there are limited prime sites with flat building areas, good views and drainage. |
| <i>Downlands Water Supply Management Committee</i> | Reduce opportunity to subdivide due to increase in water demand. |
| <i>New Zealand Institute of Surveyors (South Canterbury Branch), Canterbury Regional Council</i> | Restrict subdivision in Levels Plains due to conflict with irrigation which is suited to intensive production. |
| <i>JC and TM Gresson, P J Stray, L J Williams, South Canterbury Federated Farmers</i> | Supports but not the date of 27 August 1988 |
| <i>K W Pyke and Others</i> | Rural Living Site as permitted activity in Rural 1 Zone. |
| <i>M R and P M Simpson, J D McKinnon</i> | Supports but wants minimum area of 2ha – 3ha to achieve horticultural land use. |
| <i>South Canterbury Car Club</i> | Amend to RLS cannot be achieved on land known to be affected by the racetrack. |
| <i>Timaru District Council Chief Executive</i> | Amend wording of Septic Tank to Sewage. |
| <i>Ministry of Environment</i> | Omit performance standards to emphasise environmental effects (as per RMA). |
| <i>Minister for the Environment</i> | Effects based approach wanted. Omit minimum allotment sizes. |
| <i>Canterbury Regional Council</i> | Oppose Minister for the Environment as rules aim to address adverse effects in a further submission. |

When reviewing the planning officer's evaluation of submissions, it was apparent there were numerous key points that either supported or dismissed submissions. The submission from Air Nelson was disregarded as it lacked specifics and justification. The officer also disregarded irrigation as it was not an argument as in the plains, they use flood irrigation and technology was advanced to now irrigate hills (reducing the need to irrigated land on the plains).

The Planning Officer clarified the date of 27 August 1988 was derived from the Strathallan Section of the Transitional District Plan in the 'Progress Report and Recommendations of Draft District Plan' on the 30 May 1995. The need for the date was to ensure land in excess of 10ha would not be re-subdivided. The Planning Officer's report was that Rural Living Site (RLS) demand "is greatly diminished, and settlement patterns are now well established" (pg. 4).

The Planning Officer supported Downlands Water Supply Management Committee's submission on water demand and the impact it would have on the surrounding environment. The Committee's submissions was that if the rules were relaxed, it would see a further degradation in rural character and amenity values. The officer also noted that by having more rigorous rules and activity status with higher levels of discretion to Council, it enables cumulative effects to be considered.

Table 4 The Operative Timaru District Plan provisions for rural subdivision.

| No. | Provision |
|-----|---|
| 1 | Rural Allotments Rural allotments may be created by subdivision and shall have a minimum area of 40 hectares other than as provided for in 6.3.12.2(2). |
| 2 | <p>Rural Living Sites and 10 ha allotments may be created by subdivision in each of the following circumstances:</p> <p>(1) From any Certificate of Title existing on or before 27 August 1988; or From any title issued subsequent to 27 August 1988, where it can be demonstrated that the allotment entitlement in terms of criteria in 6.3.12.2(2) in respect of the land comprised in the title which existed on 27 August 1988, have not been exceeded; and Provided that the requirements of 6.3.12.2(2) are not exceeded by the new subdivision.</p> <p>(2) (a) The title has an area in excess of 10 hectares; and (b) The number of new allotments shall be calculated according to the following table:</p> <p>More than 10 hectares but not more than 20 hectares: <i>1 new rural living site</i></p> <p>More than 20 hectares but not more than 40 hectares: <i>2 new rural living sites and 2 allotments of 10 hectares minimum area, provided that the area of the balance land is not less than 10 hectares</i></p> <p>More than 40 hectares: <i>3 new rural living sites and 3 allotments of 10 hectares minimum area, provided that the area of the balance land is not less than 10 hectares</i></p> |

Overall, it was apparent that the Planning Officer only recommended accepting minor amendments of terminology used during the notification process. As a result of the preparation process, specifically that of the community board recommendations, the provisions outlined in Table 4 were made operative in 2006. Thus, the same provisions that were originally notified in the draft TDP, based on the Community Boards' recommendations, prior to public consultation.

5.4 Preparation of the Mackenzie District Plan

The information provided by the Mackenzie District Council outlined the difference in District Plan provisions. There were no draft District Plan provisions that specifically sought to restrict subdivision allotment areas to be guided by rules, rather that of adopting an effects-based approach on a case by case (application by application) basis.

In each application, a subdivision would be guided in the decision-making process by the planning officer's AEE. That AEE would be guided by the MDP Objectives and Policies and aspects outlined to guide and in some cases limit Council's discretion. The documents analysed as part of the results chapter were limited to the submission summaries, but limited detail was submitted due to the effects-based approach.

During the interview with Patricia Harte, when asked if there were any influential people in creating the District Plan Provisions, Ms Harte stated that "it was kind of interesting that you have asked me about people as I think they can have an effect, there was a guy there called Rick Ramsey". Rick Ramsey was the Planning Committee Chairmen and a Councillor. Ms Harte commented that "he grasped the RMA and understood it, such as the matter of national importance and walked with it, he also walked with the effects stuff... the reason I say that... because it is probably most relevant for how we deal with subdivision". Mr Geddes, who also worked at the MDC during the time when the District Plan was being prepared, acknowledged the influence Rick Ramsey had on the provisions.

When asked about what provisions in their view best suited lifestyle allotment subdivision, Ms Harte and Mr Geddes recognised the difficulty in choosing an arbitrary allotment size. Mr Hole outlined in

the interview that “essentially rural subdivision was a controlled activity, no minimum allotment size, which kind of has its pros and cons... good in many ways as it enables developers to subdivide that people want in terms of the market. The real issue with that was that most of it fell under the controlled activity and you weren’t able to apply the objectives and policies of the plan.”

In a document titled, ‘Decisions on Hearing Group No 12 for Subdivision’ dated 5 May 1999, the submissions on the Proposed District Plan that directly relate to the rural subdivision provisions were outlined in the report prepared by Council’s Planning Officer which I have summarised in Table 5.

Table 5 A summary of public submissions on the Proposed Mackenzie District Plan.

| Submitter | Recommendation |
|--|---|
| <i>Ministry of Commerce</i> | Retain proposed subdivision provisions. |
| <i>Department of Conservation</i> | Provide an assessment criterion for subdivision design against visual amenity, as well as the effects of a fragmented record of title on vegetation and habitat matters under a new heading of Environmental Effects. Refer to the Methods in the Rules Section for Subdivision. |
| <i>Telecom New Zealand Limited</i> | Delete words “and communication facilities”. Add in a new Policy to make provision for new telecommunication to new subdivisions. Create Utility Allotments a permitted activity. |
| <i>Transit New Zealand</i> | Supports the consideration of roading and access in the subdivision servicing objective. |
| <i>Ministry of Agriculture</i> | Supports Council in requiring the cost of services to be met by the subdivider. Supports process of assessment of subdivision proposals. |
| <i>Department of Conservation</i> | Supported esplanade provisions. |
| <i>Walls, Malcom and Roseann</i> | Supports rural subdivision provisions. |
| <i>Electricity Corporation of New Zealand Ltd</i> | Supports provisions. |
| <i>Peter Bell</i> | Abolishment of financial contributions for stormwater, wastewater and sewage disposal. |
| <i>Trans Power New Zealand Limited</i> | Design provisions in relation to transmission lines. |

There are numerous key actors identified within Table 5. Notably, The Department of Conservation submitted that they wanted an assessment criterion (as part of subdivision applications) that assessed subdivision design against visual amenity, as well as the effects of a fragmented record of title on vegetation and habitat matters. The Department of Conservation requested this be created under a new heading of environmental effects.

Likewise, Submitter B Murray and the Mayor accepted this 'in part' by connecting the subdivision chapter to the Rural Objective 3 and Policy 3(d). In addition, the consideration in the Mackenzie District Plan to rural amenity was supported by Transit New Zealand with potential effects of small allotment subdivision on the state highways arising from demands for access points of new allotments. The planning consultant supported Transit New Zealand's submission which simply supported the Mackenzie District Plan consideration of rural amenity. The Mackenzie District Plan was amended under the Rural Objectives and Policies, specifically Issue 4 to be that subdivision can result in the increasing demand for access from state highways which can reduce the safety and efficiency of the functioning of these roads. These difficulties can be mitigated by lot sizes, separation of access, the number of access, or limiting non-residential development.

Furthermore, in support of the overall approach to assessing subdivision was the Ministry of Agriculture and Forestry. Their submission was accepted as it merely stated their support for the effects-based approach proposed by the Council. From the interviews, Ms Harte and Mr Ramsey are the main actors for Council.

In terms of allotment dimensions and setback requirements, the MDC itself submitted against their own DP and proposed that there be a minimum building setback of 20 metres from neighbouring boundaries. The consultant planner supported the Mackenzie District Council submission and the rules were adopted. The reason for adopting their submission was justified by the consultant planner as to ensure clarity and a greater distance between residents and neighbouring activities as the District Plan no longer contained a minimum allotment area.

Ms Harte also commented on the limited number of submissions in terms of the Rural subdivision provisions. As acknowledged above, there were other players that were outlined in 'Decisions on Hearing Group No 12 for Subdivision' document, (this was sufficiently influential that Ms Harte had kindly printed off a copy for me after I had obtained the document from Mackenzie District Council). Ms Harte stated that "it was not a topic people tend to make submissions on, down there people who were concerned were in regard to ecological landscape and biodiversity... it becomes a technical exercise between staff and the committee, rather than between the staff and the public". However,

Ms Harte believed the submitters would be different now, implying that more stakeholders in terms of private landowners or developers would use submissions to voice their opinions.

During the initial implementation of the Mackenzie District Plan, the Mackenzie District Council predominantly processed applications as a 'controlled' activity, thus having to be granted by the Mackenzie District Council subject to conditions. Numerous Plan Changes have occurred since the plan became operative, the most notable being Plan Change 13 (PC13) which was notified in 2007 but not promulgated completely until 2018. The subdivision chapter was promulgated in February 2017. PC13 is commonly referred to as the plan change that sought to protect the Mackenzie Basin for the outstanding natural landscape values it expresses, for example Aoraki Mt Cook. However, PC13 also addressed the subdivision provisions in the wider Mackenzie environment. In the interviews, both Mr Hole, who was the Mackenzie District Council Planning Manager when PC13 was being drafted, and Ms Harte gave similar feedback in terms of the need for PC13 with significant development pressure in the Basin which was in the form of subdivision and residential development.

Whilst Ms Harte prepared the recommendation for PC13 which was support by Council, Mr Hole came on board after the plan was initially notified in 2007 and carried the plan change through the statutory process. Ms Harte emphasised during the interview that PC13 sought to stop housing and buildings, not subdivision, as there is subdivision for farming reasons such as forestry.

PC13 changed the activity status of applications for subdivision by providing Council with more discretion through Primary and Secondary Standards. If a subdivision application in the Rural Zone did not align with Standards, then it became a Discretionary or Non-Complying Activity under Rules 4.a and 5.a. of the Operative District Plan. Primary and Secondary Standards consisted of services and significant vegetation provisions, and protection zones.

In addition, the Appendix K – Landscape Guidelines were added as purely an assessment-based provision. It effectively gave Council more discretion and also the ability to notify applications to neighbours on grounds of the effects on landscapes.

5.5 Overview of Resource Consents

The eight resource consent applications and decision reports were analysed in terms of identifying the notification status, activity status, the number of lifestyle allotments and who acted. All but one of the applicants for the resource consents analysed used an agent other than the owner, and MFL was used on three occasions, twice in the Timaru District Council, and once in the Mackenzie District Council. The agents of the applications were all surveyors or engineers; however, the decision makers were planners or Group Managers of the regulatory teams. In the Mackenzie District Council, no notified applications were selected by Council for me to analyse. The nature of the District Plan, as recognised in the interview with Nathan Hole, explains why the sample size was non-notified as most of the applications of subdivision were controlled activities. In the Timaru District Council, I pre-selected the decisions from prior knowledge based on applications that were located in the Hadlow and Levels Plains area. In the Mackenzie District Council, Rachael Willox who is a planner, selected my information after being asked to follow up my request by Planning Manager, Ann Rodgers and Team Leader, Aaron Hakkaart.

Tables 6 and 7 outline the applicants, agent, and key points in relation to human agency (detailed notes from my analysis are in Appendix C).

Table 6

The Timaru District Council subdivision applications with details surrounding agency.

| TDC RC No. | Owner/Applicant | Agent | Activity & Notification Status | Number of Lifestyle Allotments | Key Points of Human Agency |
|-------------|--------------------------------|-----------------------------|-----------------------------------|---|--|
| 4935 (2003) | W & C Bower | Milward Finlay Lobb Ltd. | Discretionary – Non-Notified | 3 granted | <ul style="list-style-type: none"> - Written approvals provided by three neighbours. |
| 5785 (2006) | A & A Howey | Glasson Potts Fowler | Discretionary – Publicly Notified | 12 sought/ 9 granted. Appealed to the Environment Court and 12 granted | <ul style="list-style-type: none"> - Council recommended public notification. - Decision granted by hearing commissioner for 9 lifestyle allotments. - 5 submitters (3 for, 2 against) - Environment Canterbury opposed the development in terms of natural hazards which resulted in only 9 lifestyle allotments. The applicant used Flood Specialist and Engineer, Robert Hall, to counter Environment Canterbury. - Applicant appealed the decision to the Environment Court with an amended plan with 12 allotments outside of the natural hazards area. Judge Jackson granted 12 allotments. |
| 6497 (2007) | N & A Light | Selwyn Light Surveyors Ltd. | Discretionary – Limited Notified | 6 granted | <ul style="list-style-type: none"> - Decision granted by hearing commissioner. - 4 submitters opposing the application. - Submitter David Wreford owned and farmed the eastern allotment, he opposed the application due to reverse sensitivity issues. Decision resulted in a 50m building setback from his boundary. - Submitter Richard Hickson opposed application and wanted large allotment sizes and new accessway for Lot 2. |
| 6775 (2008) | N & S Fitzgerald, E O Sullivan | Milward Finlay Lobb Ltd. | Controlled – Non-Notified | 8 granted | <ul style="list-style-type: none"> - Very complex approach to deriving if the site had entitlements for lifestyle allotments in the application. - The application report was prepared by Russel Finlay of Milward Finlay Lobb Ltd. |

Table 7

The Mackenzie District Council subdivision applications with details surrounding agency.

| MDC RC No. | Owner/Applicant | Agent | Activity & Notification Status | Number of Lifestyle Allotments | Key Points of Human Agency |
|------------------|-------------------------------|---------------------------|--------------------------------|--------------------------------|---|
| RM 150054 (2015) | M & K Presser | Land Services Group Ltd. | Controlled – Non-Notified | 2 granted | <ul style="list-style-type: none"> - Limited detail in application and decision. - Granted by District Planning Manager Nathan Hole. |
| RM 170086 (2017) | N Roberson & G Handy | Prepared by the Applicant | Controlled – Non-Notified | 2 granted | <ul style="list-style-type: none"> - Decision prepared by Aaron Hakkaart, reviewed by Karina Morrow (DPM) approved by Suzette Van Aswegen (Planning and Regulations Manager). |
| RM 200042 (2020) | Three Bears Running Limited | Architects Plus Ltd. | Discretionary – Non-Notified | 9 granted | <ul style="list-style-type: none"> - Decision prepared by Rachael Willox and granted by Ann Rodgers. - Note in decision: <i>There is no minimum allotment size in the Rural Zone. The District Plan minimum allotment standards however are a key determinant in establishing character and amenity outcomes. A comparison with other zones in the District Plan is therefore important to consider as other zone standards provide context for the development. The minimum allotment size in the Rural Residential Zones for example range from one to four hectares (10,000 to 40,000m²). Allotments less than four hectares in the District Plan are therefore considered to be Rural Residential in nature.</i> |
| RM 200047 (2020) | J Reid (son of the landowner) | Milward Finlay Lobb Ltd. | Discretionary – Non-Notified | 2 granted | <ul style="list-style-type: none"> - Decision prepared by Rachael Willox and granted by Ann Rodgers. - This decision reproduced the comment made in RM 200042. |

To illustrate the potential effect and the nature of change in context, the aerial image of Figure 6, indicates the extent and potential visual impact of RM 200042, from Rachael Willox's (Council Consent Officer) Decision Report that recognised the scale of development and adjoining landowners to a subdivision that achieved 9 lifestyle allotments.

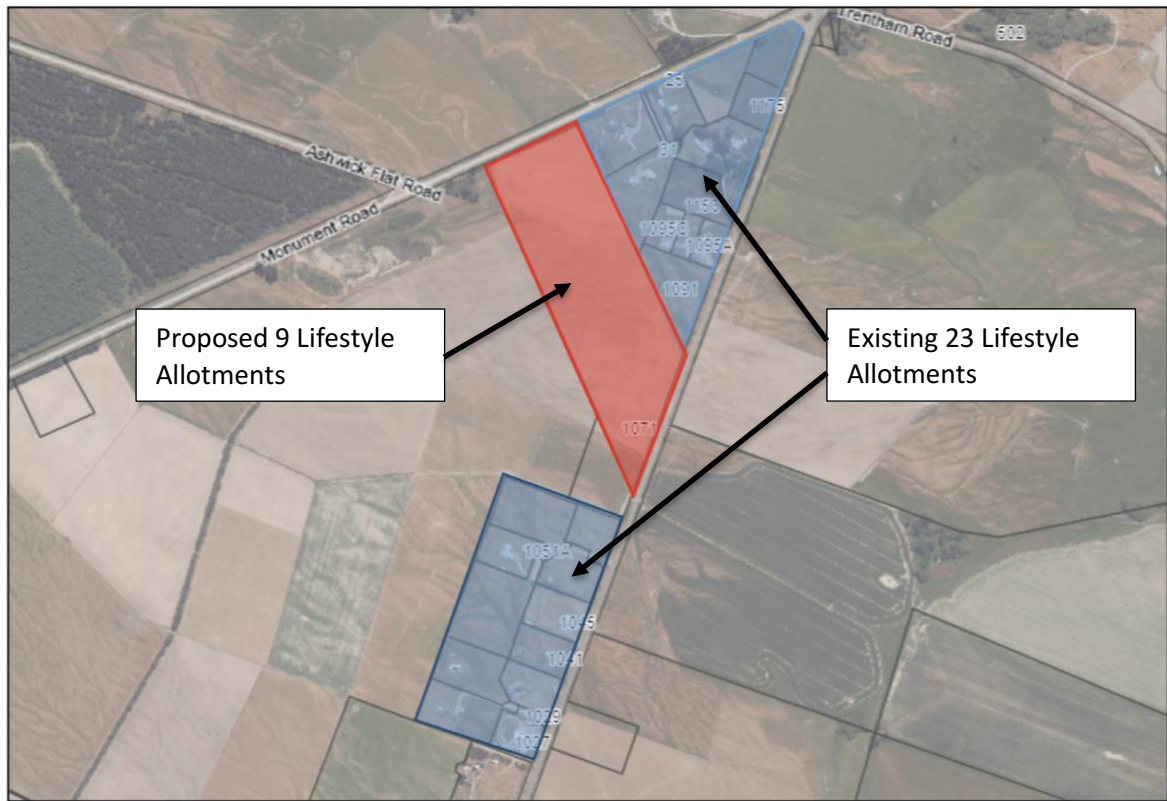
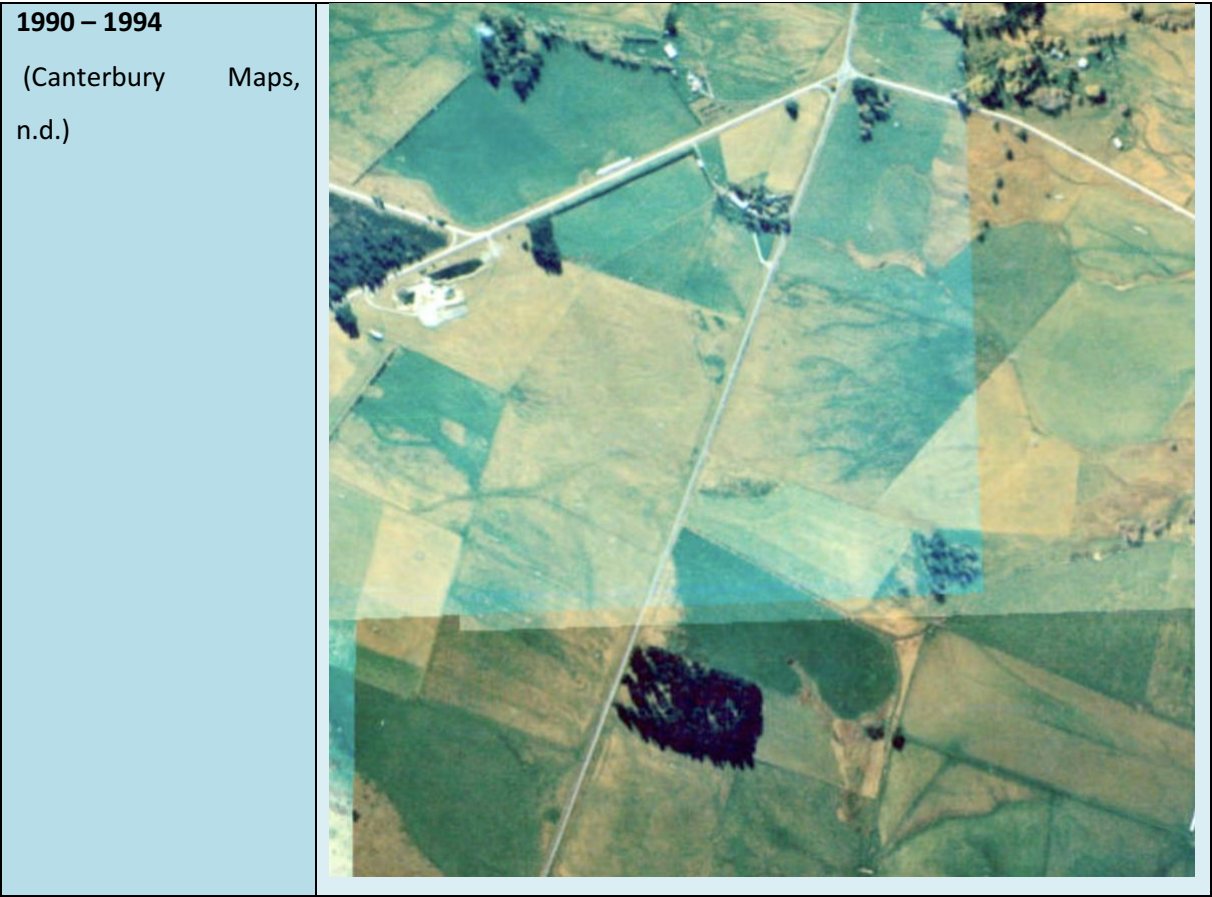


Figure 6 Existing and Proposed Lifestyle Allotments Under 2020 Subdivision Application RM 200042, Mackenzie District Council.

The area shaded blue is the existing 23 lifestyle allotments. The area shaded red was the subject site proposed for 9 allotments in the application RM 200042. The significant residentialisation is clearly represented by the aerial image and equates to the resultant environment being 32 lifestyle allotments.

The context of the resultant provisions and subdivisions can also be illustrated through historic aerial imagery. In the MDC, the area illustrated in Figure 6 which is now subject to lifestyle allotment subdivision is outlined in the aerial images in Table 8 to show change in land use between 1995 and 2019. The date of the original imagery is five years prior to the year 2000, which is five years after the Proposed District Plan provisions took effect. The year 2000 was used to ensure the District Plans

provisions had not shaped the environment for a period of five years. Five years is how long a subdivision decision remains active until such time it is exercised or lapses. As can be seen, 13 buildings have been enabled to be built on what was previously farm land through subdivisions over time and two separate clusters of houses developed. The development application reviewed here would infill between these two clusters, illustrating the ways in which these isolated subdivisions lead over time to much larger land use change through cumulative effects, beyond what was apparently intended in the plan.



2019

(Canterbury Maps,
n.d.)



Figure 7 Mackenzie District Council Aerial Imagery Contrast in Ashwick Flat Road.

In the MDC, the increase from one building to 13 buildings is substantial in changing the rural productivity of the surrounding farmland. Reverse sensitivity and cumulative effects have slowly increased, changing the rural amenity values of the surrounding environment.



Figure 8 Timaru District Council Aerial Imagery Contrast Rosebrook Road.

Likewise, in the Timaru District Council, seven buildings were located in the aerial image in 1995 – 1999, but in 2019 approximately 19 buildings were located in the same area (Figure 8). Figure 8 in the Timaru District Council aligns with the MDC and illustrates a significant increase in higher density rural environments. However, it becomes apparent that the activities-based approach in the TDP predetermines what one can do in terms of subdivision.

In regard to the Timaru District Council decision making process, a notable consideration in terms of testing the interpretation of provisions in the TDP, including certain actors involved, was a key decision that was appealed to the Environment Court.

During the interview with Mark Geddes, he was asked how successful the Rural 1 Subdivision provisions for lifestyle allotments have been in terms of implementation and how they were desired to be implemented. Mr Geddes stated that

“it depends really, because, when I first got here (2010), it was clear that they weren’t achieving what they intended... but it’s a matter of interpretation. When I first got here, we interpreted the plan and thought ok this is how we view it, and it was not necessarily how it was being administered by the Council and by the planners before me...”

Mr Geddes furthered his initial comments with “we believed there was cumulative issues and precedent issues at play and that view was ultimately upheld by the Environment Court in the Rawlings Pilcher decision... since that decision there has been a quantum shift in how the rules have been implemented”.

The Environmental Court Decision mentioned, *Rawlings v Pilcher* [2013] NZEnvC 67, considered that the TDP provisions for lifestyle allotment subdivision should be interpreted as follows:

Well, within the entire Rural 1 Zone it's quite clear in my mind that there is provision for more lifestyle blocks because that's clearly intended in terms of if someone 's got 10 hectares, (inaudible) [sic] size lot they can subdivide a further allotment. What it's not designed to do is provide for an aggregation of lifestyle lots in a single area in a manner that's leading towards a defacto rural residential zone.

The decision also stated the following:

It is a controlled activity standard and the District Plan provides that proposals which do not meet the standard can seek consent as discretionary activities. In assessing such applications the cumulative effect of not meeting the standard is something which the consent authority is required to take into account. In this case, there is a discernible cumulative effect when this application is considered in conjunction with all of the other approved applications which have continued the pattern of more intensive subdivision in this area.

The caselaw illustrates the relationship the environment court has with planning and how actors can be at centre stage of how provisions are interpreted and consequently exercised. In this instance the Judge became the major actor, but the decision rests on the rules in the plan and the decision is constrained by them.

5.6 Summary

The results have recognized numerous key actors who, in each case, are restricted by the context in which they seek to act.

For plan-making, the structural components of context, that being the RMA 1991, enabled Council to be the dominant actor, whilst in the Timaru District Council, the Council enabled Community Boards to exercise their agency during the drafting process to influence the provisions. In terms of influential actors during the notification process, empowerment was a fundamental component in terms of one's social position. Key actors that were successful in exercising their agency in the decision-making process for making plans included Council, Community Boards, the Planning Committees.

In terms of resource consent decision making, the notification status was the fundamental component on deciding whom could act which was effectively determined by the District Plan and the processing planner. However, the results show that in decisions in the Timaru District, the neighbour was considered an affected person and acted to shape the outcome in terms of built form on the adjoining site. Key actors were more specifically the processing planner whom was acting under delegated authority from Council, as well as the notified affected persons who were enabled within the context to exercise their agency.

The agency of the District Plan also came to light in the results chapter. This aligned with how the power of the planner, particularly in the Timaru District Council, was derived from how they interpreted the provisions and the influence the Environment Court had on shaping how a planner could act. Overall, whilst Council and the planner could exercise agency in the most influential way, it was significantly restricted by the context of the RMA 1991.

Chapter 6

Discussion

This chapter will discuss the findings reported in the previous chapter in relation to literature reviewed in chapter 2. In particular, the results relating to the context of how District Plans are prepared under the RMA and are the consequence of human agency will be discussed. This context will then provide the foundations to discuss the role of human agency in terms of the process in obtaining a resource consent. Finally, this chapter will conclude with a discussion that considers the construction of place and human agency within the context of the RMA.

6.1 The Context of the RMA and District Plan Preparation

The context of the RMA in regard to District Plan preparation processes will be analysed using human agency theory to compare and contrast the Timaru District Council and Mackenzie District Council approaches. Healey's (2010) concept of human agency disregarded time when deconstructing social context as time cannot be assessed or recorded. However, time in this instance was able to be deconstructed due to the detailed nature of the documentation being systematically detailed over time and the presence of aerial imagery.

6.1.1 Human Agency when Drafting Provisions

Lonning (2018) and Chen et al. (2020) theorised how understanding the space in which one can act is fundamental to understanding how agency is exercised. Thus, by deconstructing the forces that shape a particular space, Healey (2010) believes context can then be analysed. Context in this instance is the space where one seeks to act. Thus, context is shaped through the RMA. The process, or lack of, during the *drafting* pre-notification stages of a District Plan under Schedule 1 of the RMA illustrates the authority given to Council to exercise their discretion over the pre-notification of a proposed plan engagement process. The preparation of the TDP encompassed a four-year process prior to being publicly notified. From the forefront of the preparation process, it became apparent that the RMA influenced to what extent one could act. The process during the fourth year of preparation in 1995 allowed for a critical insight into what actors were and were not influential in exercising agency.

Councils have the ability to shape the District Plan provisions through the drafting process. The ability for an individual to act, specifically during the drafting stage was subject to Council discretion. This was illustrated particularly in the TDP through the substantial reliance on community boards and the notable omission of the public from all of the meetings that had lifestyle allotment subdivision on the agenda. Similarly, although the MDC did not make any copies of their minutes available for review, the approach to constructing the provision were prepared within the parameters of Council through the staff and Planning Committee. This was emphasised during the interview with Ms Harte when she stated, "it becomes a technical exercise between staff and the committee, rather than between the staff and the public". Although the Mackenzie District Council had three community boards, there was no record provided from Council of their input into the draft plan, nor were they identified as significant in interviews.

With particular focus on the Timaru District Council, the Council enabled such engagement with the respective community boards to occur, which in practice, illustrated collective agency through those Boards, as defined by Mulberger (2005) and Bandura (2006), as the community boards were made up of local people who resided and shared similar beliefs of their community. Bandura's (2006) definition of proxy agency also aligned with the purpose of community boards as they, the board members, acted on behalf of their respective community who they sought to represent as they could influence the board members to voice their opinions to Council. Complexities arise when you deconstruct the role of community boards as they were established under the LGA 2002 to represent the views of the wider community. Community boards views may or may not have been that of certain individuals in the respective communities. Therefore, the Timaru District Council's reliance on elected community boards only enabled the 'majority rules' viewpoint to be expressed. Marginal or minority communities views might not have been represented.

However, consequent of the 'majority rules' approach of community boards, their opinions were considered to be more influential due to the context of their action, thus their agency was considered more powerful in the context of the RMA and indirectly through the LGA. The successful agency exercised by community boards through their comments on the Draft TDP was proven in the results by the Geraldine Community Board, who was seemingly dominant in exercising collective agency. The support from the Temuka Community Board for Geraldine Community Board's submission to Council illustrated further collective agency with the power of two boards supporting

the same provisions. As a result, the Geraldine Community Board's submission was partially adopted in the Volume 2 TDP Draft provisions that were then notified to the public. Thus, two tiers of collective agency prevailed in creating the Draft TDP provisions which resulted in the change of the Planning Officer's view.

A structural constraint of the drafting process of the TDP was the limited time for the Planning Officer to analyse submissions which was between 22 May 1995 and 2 June 1995. However, the structural constraint was not consequent of the RMA, it was created through the Planning Committee when drafting the timeline of significant dates. The contestation of the provisions within the drafting process was overlooked in this instance.

In regard to the Mackenzie District Council, the Council as a whole, exercised collective agency with input from experts such as Patricia Harte who exercised individual agency through the power of her planning position (and experience), that being to assist the District Plan Review.

The outcome of the Timaru District Council processes resulted in the Draft TDP using minimum allotment sizes, which is distant from the effects-based nature of the RMA. In contrast, the process undertaken by the MDC was very much of an effects-based nature and did not establish minimum allotment sizes. The underlying reason for the differing methods of assessing rural subdivision was resultant of the Council's view. Within the Council, it became apparent through the interview with Ms Harte that Mr Ramsey was instrumental in his understanding of the effects-based approach and consequently how well MDC adopted the provisions. Mr Ramsey illustrated again how empowerment helped change the outcomes as he was the Chairman of the Planning Committee. Thus, whilst the RMA was effects-based, the legislation gave power to Council's to exercise their own agency and consequently create their own provisions. However, in the modern context of the RMA and implementation of an NPS, including the NPS for Urban Development and National Planning Standards, the outcome is likely to give less agency to Council as the outcomes are greatly predetermined through national policy (the NPS's). This is indicative of a move from local agency to a more distant central government and science-based agency.

6.1.2 Human Agency during the Public Notification Process

The public notification process encompasses public submissions on the Proposed District Plan. In terms of public submissions on plans, the context of the RMA removes restrictions on one to exercise human agency. As a result, the process becomes more democratic compared to the initial preparation process of the draft plans which is led by Council planning officers and guided by the Planning Committees. However, one's political agency is argued by Gough (1999) and Muhlberger (2005) to be restricted without the correct skillset, motivation or type of identity. The political agency of submitters could then be used, in accord with Healey (2010) and Tewdwer-Jones and Lord's (2009) empowerment concept, to determine if the RMA enables or restricts one's ability to act.

The Timaru District was already subject to lifestyle allotment subdivision as the urban environment has experienced growth and the pressure of the 1980's neoliberal processes resulted in farmers wanting to sell off lifestyle allotments. The Planning Officer who drafted those proposed provisions gave significant weighting to the lifestyle allotment subdivision provisions from the Strathallan County Plan, for example the date being the 27 August 1988 for entitlements and dismissed any submissions questioning the date. Whilst exercising individual agency, the Planning Officer recognised the market environment where people were leaving the Timaru District just so they could reside on a lifestyle allotment. The rationale used by the Planning Officer recognised the impact of growth in the District and perceived the loss of lifestyle-wanting residents to neighbouring Districts such as Waimate as a risk to the TDC (although the nature of the risk was unclear, it appears to relate to rating and overall proportionate size and influence of the TDC relative to neighbours).

Illustrative in the TDP, collective agency was at times successful in achieving outcomes, although some actors were actually acting in proxy. However, the key factor was the planning officer who exercised empowerment through their position in the planning of the Timaru District Council's Evaluation Report of Submissions. For example, The New Zealand Institute of Surveyors (South Canterbury Branch) and the Canterbury Regional Council were each examples of proxy agency that acted collectively to advocate to support less intensive subdivision in the Levels Plains area due to irrigation and groundwater, however the planning officer disregarded irrigation as an argument due to the advancement of technology to irrigate hillsides². The power in this instance was recognised by

² The Levels Plains is a flat topographical area which is characterised as the southernmost portion of the Canterbury Plains.

the CEO supporting Air Nelson's submission to restrict subdivision in close proximity to the airport. The planning officer accepted the submission and zoning in close locality to the airport.

Although the Timaru District Plan and Mackenzie District Plan were contrasting in terms of approaches to the provisions of lifestyle allotment subdivision, the final decision makers who had the ability to act were the Councillors and the Planning Officers. It then becomes apparent that the context of the RMA enabled Councillors and Planning Officers to be the decision maker prior to public notification. Likewise, the initiative of PC13 being Council-led illustrates such a point.

6.1.3 Temporal Orientation

Although the legislation has not been significantly amended in terms of Schedule 1 of the RMA, Ms Harte considered that both Councils had very different physical environments when these provisions were prepared. This leads to Gough's (1999) concept of temporal orientation, that is supported by Emirbayer and Mishe's (1998) concept which considers that human actors do not simply repeat actions routinely, that they invent new options or opportunities which is defined as being an actor's way of continuously changing one's temporal orientation. As established previously, one's agency is shaped by their knowledge and values, which correspondingly is shaped within the environment in which they live (Muhlberger, 2005; Emirbayer & Mishe, 1998). This would reflect why Ms Harte and Mr Geddes hypothesized that if these provisions were drafted now, the change in environmental context would result in different rules as both Districts have been subject to significant lifestyle allotment subdivision. The matter of the changing environment, and consequently Councils temporal orientation, was apparent through the Mackenzie District Council leading PC13. Whilst PC13 was predominantly in relation to the Mackenzie Basin, the restriction of lifestyle allotment subdivision in the Mackenzie Basin illustrated just how the Council's temporal orientation changed due to the rapidly evolving environment through the residentialisation of the Mackenzie Basin³. Thus, PC13 was led by Council and represents how the context, that being the evolving physical environment, and the impact of actors, in this case the Mackenzie District Council, to guide significant change in provisions. It is of interest that both the Mackenzie District Council and Timaru District Council are undergoing full District Plan Reviews. In terms of public submissions and the increase in lifestyle allotments in both Districts since the original provisions were drafted in 1995, if one were to submit on the Proposed District Plans, it would be anticipated that their views would be guided by the

³ The Mackenzie Basin is an elliptical intermontane basin in the high country of the South Island, New Zealand.

resultant physical environment that has been shaped by the operative provisions of the District Plans over the past 20+ years.

6.1.4 Summary

Throughout, the results of the research illustrated what Healey (2010) would consider empowerment and corresponds with how Tewdwer-Jones and Lord (2009) argued that an actor would be more effective with official recognition. Whilst community boards were able to exercise collective and proxy agency within the Timaru District Council, individual agency was also prevalent through the General Manager and Councillor Burdon. Both individual actors addressed how the Geraldine Community Board had not dealt with the balance land of the subdivision provisions proposed and sought to restrict further subdivision with a minimum allotment size of 40ha. In contrast to the Mackenzie District Council, empowerment was in the form of collective agency through the Planning Committee and Council staff who, together, could be considered as a collective agent. The results corresponded with Healey (2010) and Tewdwer-Jones and Lord (2009) as there is a clear favourable influence of those actions from those who are empowered through their position.

A common theme throughout the District Plan Preparation processes of both the Mackenzie District Council and Timaru District Council, was that the RMA restricted the ability of human agency to those people who were in positions of power delegated to them by the RMA. The RMA 1991 then enabled human agency to occur at the time of the public notification of the proposed plans. However, derived from the results with reference to the submissions, the planning officer ultimately determined the successfulness of actors.

Throughout, omission of the general public, in particular, supported Lonning (2018) and Chen et al. (2020) who concluded that certain governments and or legislation can restrict human agency. The subject example above clearly aligns with the conclusions of both academics. Throughout, the context of the RMA 1991 provides insight into property rights on rural land. Particularly Council, a collective actor, has the ability to exercise its agency more effectively than the public, who cannot until such time as the rules are drafted. Consequently, the actions, and restricted actions, shape the way lifestyle allotments can be achieved over those landowners. The underlying impacts of the results in which in the RMA 1991 restricts the individual's ability to exercise human agency effectively sheds light on how the RMA 1991 reduces one's ability to be the 'lord of their domain'.

6.2 Context of RMA and Subdivision Applications

Although perhaps not illustrated throughout the submission processes by submitters, the activity status of applications, in this case between controlled or discretionary, was a determining factor of how the RMA again limited one's ability to act. The controlled activity status does not enable a resource consent application to be notified, and in the case of the Mackenzie District Plan being an effects-based approach plan, the effects were limited to those matters predetermined by the District Plan and applications could be not notified. The structural context of the RMA reduces the number of actors, and automatically reduces one's human agency, for example, an adjoining landowner, or someone who simply does not approve of the lifestyle allotment occurring. Thus, in this instance, the structural context of the RMA aligns with Healey's (2010) ideological argument in which structural context restricts one's ability to act. In contrast, the RMA under the discretionary activity status enables the decision maker to exercise more agency, along with considering who else is able to act or influence a decision. The activity statuses are explored in more detail throughout the following sections.

The amendment of the RMA in 2009 changed the context substantially and arguably increased the rights one had over their land. The amendments consisted of changes to what determined the notification status of an application, the determining factor being the extent of adverse effects derived from an assessment of environmental effects. Prior to 2009, the adverse effects were only required to be 'minor', or 'more than minor' to trigger public notification. The amendment required notification status to be considered if the adverse effects were 'more than minor' (removing the 'minor' category). Thus, the amendments to the RMA changed the context of how Council, or that of the planner processing an application, would decide upon who can or cannot act. The notification determinant prior to 2009, which existed when both first generation plans were prepared, may also reflect why the activity status of the applications analysed were not non-complying as the underlying District Plans' anticipated lifestyle allotment subdivision would be suitable and restricted by the market if the effects were minor, or more than minor.

6.2.1 Individual Agency

Although Council is considered to be an actor, delegated authority in terms of decision making is provided to Planners for the purpose of resource consent decision making. One notable actor in the Mackenzie District Council was Rachael Willox. The power of her agency was notable in the two

recent decisions of RM 200042 and 200047. The adoption of Ms Willox rationale outlined in both decision reports gives detail on other zones and their respective allotment areas, thus moving away from the true effects-based approach expected by Council when drafting the plan. Notably, the Three Bears Running (RM 200042) decision granted nine lifestyle allotments. The activity was discretionary and non-notified and subsequently did not require written approvals. However, as the decision maker's actions are derived from the rationale of the District Plan, the District Plan itself must exercise a form of agency.

However, the *Shirtcliff vs Timaru District Council* [2020] NZEnvC 178 case recognises the limitations of acting as an individual upon appealing extremely high processing costs of a subdivision application. The Shirtcliff's represented themselves and the Environment Court recognised the frustration of the applicants was exacerbated as they tried to progress the application as a lay person. The difficulties of acting as an individual lay person in the planning profession are prevalent in this particular case.

6.2.2 Proxy Agency

Seven out of the eight applications were prepared by consultant planners or surveyors. The detail required in an application is consequent of Schedule 4 of the RMA which restricts how, or if, actors have the ability to act. For example, associated processing fees and consultant fees may hinder one's ability to act in terms of undertaking development itself or appealing an application through the notification process. Thus, the technicality of requiring a proxy agency to simply interpret the provisions of a District Plan becomes apparent. The complexity of the TDP provisions became evident as part of the resource consent application process. The TDP provisions were difficult to follow and the entitlements allocation were required in all cases to be deconstructed by consultants, in this case surveyors or engineers who worked for consultancies that regularly undertook land development. In contrast, the effects-based approach in the Mackenzie District Council enabled one applicant to not use a consultant and submitted an application themselves, albeit in an email format with limited detail. The final aspect of achieving subdivision however requires a surveyor to prepare a new plan of the new allotments. Thus, the use of proxy agency can be concluded as being fundamental to achieving a resource consent for lifestyle allotment subdivision.

6.2.3 Empowerment

Structure constraints have predominantly focused on the RMA, specifically how those who act are restricted or enabled, for example through empowerment or disempowerment. However, the planner's assessments and decision on resource consents and planning would require empowerment to ensure their actions are impactful. If their actions are impactful, the purpose of the RMA should be achieved. However, if you consider the New Zealand Planning Institute's Code of Ethics, a planner is further restricted in terms of their ability to exercise agency.

The results (set out in Tables 5, 6, and 7 in Chapter 5) demonstrated several facets of how empowerment, which was theorised by Healey (2010) and Tewdwr-Jones and Lord (2009) as being an influential factor in the success of exercising agency, was exercised successfully in the public and limited notification processes. In the Timaru District Council, RM 4935 illustrated that applicants (or their consultants) were able to provide written approvals from affected parties and, thus, the applicants were themselves able to exercise their own agency during the preliminary stages of an application before it was submitted to Council. Contrastingly, the applicants of RM 6497 (Selwyn Light Surveyors Ltd) did not have written approvals from affected parties and the Council decided to notify those neighbours. Thus, the empowerment put upon one when deciding on who can act is not only limited to Council planning officers, but also the applicants themselves in the preliminary stages of the application.

In terms of resource submissions, RM 6497 illustrated the power given to submitters in response to notification of applications. In this instance, submitter David Wreford exercised agency through the power that was effectively given to him through the RMA notification process and the hearings commissioner who was the decision maker (name unknown). Thus, one facet of empowerment in resource consents for subdivision is that, if the notification is processed on a public or limited basis, then the RMA enables actors to exercise agency. The actor in this instance argued 'reverse sensitivity' which is a planning term and so showed his knowledge of planning was strong. In contrast, Richard Hickson wanted the minimum allotment sizes to increase although the 2ha area was already achieved. In planning, to grant an allotment greater than 2ha in area would set a precedent when applying the entitlement rule as one is only allowed allotments between 5,000sq.m to 2ha, or 10ha plus in area if it was balance land. Thus, the line of argument by Richard Hickson was not informed by a planning consultant nor did he understand the complexity of such an argument.

The second facet is associated with one's empowerment to exercise their agency over the original decision maker, for instance, if one appeals the application to the Environment Court. As illustrated by the *Rawlings v Pilcher* [2013] NZEnvC 67 case, and again in the decision of RM 5785, the applicant and or appellant holds the ability to exercise agency further in the decision-making process than Council's decision maker could.

Throughout, empowerment is given to Council to be the decision maker which would align with their role and to ensure the purpose, that being Part 2 of the RMA, is achieved. However, Council's agency is restricted to a certain level and consequently, the applicant and or appellant, has the ability to exercise further agency in the Environment Court. Fundamental to the process, the role of District Plans and the RMA are what provide the rationale for who may exercise agency, thus Council's decision makers' ability to act is heavily restricted through legislation and aligns with the concepts of Lonning (2018) and Chen et al. (2020). The sample of MDC decisions did not have any limited or public notification statuses, this recognises that the District Plan itself is required to be shaped in a way that the decision maker can exercise their agency to notify the application on a public or limited basis, thus enabling or restricting others to exercise their own agency.

Particularly emphasised in the resource consent decision making process, the context of the RMA enables one to influence the land use of someone else's land. The extent to which this occurs is dependent upon the legislative context under the District Plans which in the results is emphasised in the differences between notification statuses of the TDP and MDP. Therefore, thematic throughout the results, the strongest form of agency is the District Plan itself.

6.2.4 The Agency of District Plans and Environment Court

The District Plan is given effect through the RMA and is constructed to represent the communal rights of a community. Effectively, the District Plan exercises its own agency that reflects the desires of a community. However, the decision-making process is restricted to the activity status in which an activity is given. The District Plan itself seeks to shape the environment through provisions to enable the purpose of the RMA to be achieved. The District Plan can be perceived as the communities' means of acting and can influence how one acts. The resultant environment which was shaped through the District Plan, then influences how one perceives the environment and shapes their identity. The outcome directly represents Muhlberger (2005) and Emirbayer and Mishe's (1998)

definition of how one's agency is formed and is influenced by one's past, their identity, experiences and values. For example, the impact of the cumulative effects of the Three Bears Running RM 200042 decision may result in one's knowledge of the District Plan increasing as their perception of rural land use does not include 47 clustered lifestyle allotments.

Also aligning with Muhlberger (2005) and Emirbayer and Mishe (1998), the District Plans' influence on shaping environments has been operative in both Councils for a minimum of 15 years. Both Councils are undergoing District Plan Reviews and it could be anticipated that knowledge of those willing to act would have been formed by the agency exercised by the first-generation District Plans. This would reflect how the Timaru District Council Planning Officer who drafted the Subdivision Provisions gave significant consideration to the Strathallan County Plan, that being the Plan that shaped the environment prior to the Timaru District Plan. Their knowledge was shaped from such provisions.

Furthermore, agency is restricted to the agency of planners within their assessments of environmental effects. The use of *Queenstown-Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299; [2006] NZRMA 424 (CA) as caselaw is another example of how a planner's agency is restricted in defining the environment and the term minor. The agency exercised by the Environment Court guides the way in which a planner can consider what constitutes the environment as part of subdivision resource consent applications, and the extent of the assessment terminology.

In the future, however, drafted regulations such as the NPS for Highly Productive Soils may restrict the level of agency one has to influence the rural environment. The impact of such regulation would be theorised by Lonning (2018) and Chen et al. (2020) to change the context where actors can act. Therefore, with the likely protection of highly productive soils and more stringent other NPS and NPS on Urban Development, one's ability to act may be restricted due to new structural forces.

6.3 The Construction of Place

The analysis thus far has focused on how impactful the RMA 1991 has been on the context wherein which agency can, or cannot, be exercised. However, there are numerous underlying considerations when deconstructing the context which has consequently shaped the way Healey (2010) views place.

Place is considered by Healey (2010) to be a fluid term. Whilst place can be considered in a moment in time, the moment, prior moments and resultant moments enables the analysis of the fluidity which consequently shaped place through changing the structural context. A moment can be illustrated through *Rawlings v Pilcher* [2013] NZEnvC 67 where the interpretation of provisions changed after new planners arrived at Council. The change resulted in lifestyle allotment subdivision and building entitlements being restricted and better aligning with the objectives and policies of the District Plan. The way in which this case law, led by Council upon the arrival of new processing planners, restricted lifestyle allotment subdivision has changed the context in which the Timaru District was shaped. The prior moments reflected profuse lifestyle allotment subdivision with limited constraints, the resultant moments are addressed through the change in interpretation which made it harder to achieve lifestyle allotment subdivision. The prior moments shaped place and the action of change in Council's interpretation aligns with Gough's (1999) concept of temporal orientation where, Council as the agent, has changed their temporal orientation, in this case due to the cumulative impacts. Whilst the resultant environment in the Timaru District has seen the larger farming allotments utilise their full entitlements and consequently creating less lifestyle allotment, the area based approach in the TDP provisions has not necessarily been more or less effective than the resultant environment in the Mackenzie District Council.

In the Mackenzie District Council, the impact of lifestyle allotments in Ashwick Flat has illustrated significant cumulative effects and created an environment where lifestyle allotments can occur if sufficient rationale is provided at the time of subdivision application. The effects-based approach, however, has not seen the outcomes one would perhaps anticipate. The example of RM 200042, which was granted in 2020, results in an additional nine lifestyle allotments adjacent to 17 allotments. The implications of the significant increase in lifestyle allotments are related to adverse effects associated with cumulative effects, reverse sensitivity, and the loss of rural production land.

6.3.1 The Future of Lifestyle Allotments

A submission is a mode where one exercises agency. A submission represents one's opinion on provisions which shape an environment and consequently represent an opinion on how an environment should exist, appear and function. In other words, submissions represent one's ability to influence communal rights; those rights are formulated and implemented through District Plans. Giddens (1984) addressed normative perspectives which, in terms of lifestyle allotments, have not become normative due to the contestation around the perspectives of rural land use. For many, and reflective of the submissions in the Timaru District Council, rural land use should be used for productive purposes and not unproductive land commonly associated with lifestyle allotments. The resultant environments, which both District Plans have now shaped contain rural lifestyle allotments throughout rural production land with clustering and limited provision to restrict ad hoc development.

Particularly, in an environmental context, there is an evolving ideology to protect rural land. This ideology aligns with the thoughts derived from the FAO Forum (2016) where the rural and urban relationship is perceived, in the past, as rural being transformable to the benefit of urbanism. Consequently, the ideology is recognised at a national scale in New Zealand and reflects the recent introduction of drafts of a Proposed NPS for Highly Productive Land to protect productive soils. However, the NPS of Urban Development does not necessarily address the FAO's concerns. Land on the perimeters of urban areas are still being subdivided for residential purposes in clustered zones which depart from the provisions on both the Timaru District and the Mackenzie District where lifestyle allotments could be achieved in rural production zones. The influence of this ideology transpires to the current Draft Timaru District Plan released in 2020 which addresses the issue with the proposed minimum allotment size in all rural zones to be 40ha in area. Whilst it has again adopted a minimum area-based provision, the outcome of the new provisions, if adopted, would reduce one's ability to achieve new lifestyle allotments and retain the existing environment. Thus, these normative perspectives have evolved through a change in temporal orientation which has co-evolved throughout the changing environment. However, the consequent change in approach to restrict further development cannot remediate the existing environment, as lifestyle allotments and consequent dwellings are effectively an irreversible action (Andrew & Dymond, 2012).

Throughout, a landowner's ability to be 'lord of their domain' or their property rights is shaped through both their individual actions on their land and the District Plan provisions. Thus, District Plan

provisions are the means in which communal rights are expressed. The 2009 amendments to the RMA changed the overall structure of the context as was illustrated in the Timaru District Council with half the applications from the sample being notified prior to 2009. Thus, the rights of the landowner were subordinate to the District Plan and consequently communal rights.

In the TDP, prior to the *Pilcher vs Rawlings* [2013] NZEnvC 67 decision, the District Plan and Communal Rights were subordinate to the individual rights of the landowner as these were limited and restricted the landowner's ability to exercise agency.

6.3.2 Effects-Based verse Activities-Based

The MDP was expressed in terms of lifestyle allotment subdivision as being effects-based. In contrast, the TDP was activities-based and had defined allotment sizes that were considered to be lifestyle allotments. The method of implementing lifestyle allotment subdivision in the Timaru District is very restrictive on one's agency as you are required to meet the net area requirements and relates back to the historic 1988 entitlement ruling that limited three lifestyle allotments per 40ha of land. Consequent of the *Pilcher vs Rawlings* case, the ability for one to exercise agency, be it Councils' discretion or the applicant was further restricted as the interpretation of the entitlement rules were set by case law.

Contrastingly, in the MDP, there is a larger scope for agency to occur as the effects-based approach does not require certain sizes to be achieved and no complex entitlement rules to be interpreted. The effects-based approach not only allowed the landowner to exercise more agency, but also Council Planning Officers when making decisions on applications. This would perhaps reflect why one application was prepared without a consultant. Throughout, the effects-based approach was fundamentally catalysed by the Mackenzie District Council Planning Committee and notable passion and knowledge of the Chairmen, Rick Ramsey.

By deconstructing the effects-based verse activities-based in the District Plan provisions, the significantly contrasting outcomes of how agency can be exercised is revealed. The TDP restricts agency, even more so as a result of the interpretations of the provisions being defined by the Environment Court. Agency here is not just limited for the applicant, but also the Council Planning

Officer who cannot depart from the ruling during their assessment of environmental effects. In the Timaru District, the decision of who gets to shape place is restricted by the District Plan and gives power to communal rights. This illustrates the power of an activities-based approach in restricting agency. The Mackenzie District effects-based approach enables agency to occur through both the applicant and Council in shaping place.

Consequently, the outcome of place has resulted in the Timaru District rural environment being shaped in a way that illustrates the entitlement rule, that being three lifestyle allotments per 40ha of original titles from 1988. In contrast, the Mackenzie District has witnessed significant clustering of lifestyle allotments and a less thematic environment of lifestyle allotments than that seen in the Timaru District.

Into the future, with the consideration of the impacts of recent and anticipated national policies, the scope of agency is anticipated to be reduced in terms of lifestyle allotment subdivision. The rationale behind this is simple, the environmental context has evolved to see the adverse impacts of lifestyle allotment, thus the resultant overarching policies that guide District Plans will restrict the ability of one's agency. This will become apparent in Council when preparing their District Plans, and to the landowner in terms of tightening the perimeters in which they can exercise their property rights.

6.3.3 Summary

Throughout, it becomes apparent that the context of the RMA, whilst effects-based, still enabled activities-based approaches of District Plans to occur. Consequently, the TDP was drafted in a way that gave power to community boards whilst being prepared by Council. The Draft MDP was primarily Council-led through planning officers, community boards or Councillors, and had limited interest for public input. In practice, the scope of agency able to be exercised in lifestyle allotment subdivision applications within both Districts varied considerably, with the Timaru District being very restrictive of agency in both the applicant and Council's discretion due to the activities-based approach. In contrast, the Mackenzie District enabled agency to occur through the effects-based approach. However, the future of lifestyle allotment subdivision is in jeopardy due to the evolving ideology and consequent international and national policy that seek to change the belief that rural land should be reactive to urban demands.

Chapter 7

Conclusion

Throughout the preceding discussion chapter, particular focus was given to the overarching research question, being, how does the RMA provide for actors to influence outcomes in relation to rural lifestyle allotments? To address this I adopted a combination of key informant interviews and detailed document analysis of case study resource consents from two neighbouring district councils in the South Island of New Zealand – Timaru and Mackenzie District Councils. While there are clear limitations to the extent to which the results from limited case studies can be generalised to the entire country, let alone to other countries with other legislative and socio-political and economic contexts, I am confident in the robustness of the information to suggest that the findings and conclusions provide a base and direction for further research.

In this chapter, therefore, I set out my conclusions on specific questions that I have addressed to assist in answering that overarching question. I then suggest areas for future research before presenting my final conclusions.

7.1 Revisiting the Research Questions

The following questions will be answered in summary with a concluding analysis of the dissertation as a whole.

How do the RMA processes allow for actors to influence District Plan Provisions? Who were the actors who are influential in preparing the District Plan and at what stages were they involved?

Schedule 1 of the RMA dictates how actors can influence District Plan Provisions which during the drafting stages is at the discretion of Council. The results demonstrate that Council very much limit the public's ability to act on draft provisions and it is usually a Council, consultant or Community Board task. By the time the Proposed District Plans are notified, the broad content and direction of the provisions are already set. Consequently, the influence of public submissions are limited, with

one's influence being determined through power, for example, if they are the CEO submitting on their own Councils District Plan. Thus, those actors who are given delegated power within Council frameworks are the most influential actors.

How do the RMA processes allow for actors to influence Resource Consent Decisions for Lifestyle Allotment Subdivision Applications? Who are the actors who are influential in preparing the Resource Consent Decisions for such allotments and at what stages are they involved?

Likewise, Part 6 of the RMA dictates how actors can influence resource consent decision for lifestyle allotment subdivision applications. The results demonstrate that Council again dictates who is able to exercise their agency primarily through its initial decision as to who, if anyone (including the general public) to notify of a proposal. It is clear that one's ability to act has been restricted by the 2009 RMA amendments with half of the applications prior to 2009 being notified compared to non-notified in the Timaru District Council. The most influential actors involved in both councils studied were Council and the processing planning officers.

In conclusion, the District Plan represents the communal rights of the community and this relationship to one's individual rights over their land differed between Councils. The TDP significantly restricted agency of the landowner due to the activities-based approach. In contrast, the MDP enables more scope for agency to occur due to the effects-based approach leaving the landowner to decide on their land use and the Council Planning Officers to exercise more discretion. Thus, in the MDC the scope for agency allowed through the District Plan has enabled the landowner and Council Planning Officers to have more influence in shaping place. In the TDP, the provisions themselves restrict the scope of agency and the provisions have more influence in shaping place. The environmental outcome of this is representative of the theme in the Timaru District that has three lifestyle allotments per 40ha of land.

7.2 Suggestions for Further Research

This dissertation undertook a snapshot of resource consent decisions and a varying degree of information was obtained from each Council. A limitation of the research would be the level of detail provided from the Mackenzie District Council in terms of their records that they could obtain. A larger sample of resource consents could provide the focus of future research which compare

different Council processes within two or more Regional Councils, therefore examining the impact of Regional Policy Statements on decision-making processes and the level of agency councils have upward to the regional councils. Likewise, economic status was characterised as a feature of lifestyle allotments, an area of further research could look at the financial requirements of exercising agency under the RMA.

As the District Plan Review of both first-generation plans is currently underway in both Councils, an area of further research would be to examine the second-generation District Plans' preparation processes and provisions to see how agency may have changed. For example, the effect of digitalisation of District Plans and online submission methods, or if the knowledge that forms one's view has changed as a result of the cumulative effects observed resulting from previous plan provisions. By examining the new provisions and review process, the extent in which the National Planning Standards and National Policy Statements have influenced one's ability to act could be deconstructed and examined in terms of property rights. Likewise, a similar approach could be adopted but to examine the decisions on resource consents prior to the 2009 amendments and post the 2009 amendments of the RMA.

Throughout, the research has shown that the nature of District Plan provisions significantly influences the ability of one to exercise agency. The contemporary issue in terms of the loss of rural productive land has implemented and is continuing to shape national policy which in turn will further restrict agency in influencing District Plan provisions and resource consent decisions for lifestyle allotment subdivision.

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Appendix A

Semi Structured Interview Questions

A.1 Interview Questions

Patricia Harte

- Can you tell me about your history of work as a planner? What did you study?
- What are your main interests in planning or career highlights?
- I think it is fair to say that the subdivision provisions at MDC are rather unique as they don't have minimum allotment sizes, similar to that of Waimate District Council. What was the broad process in which the subdivision standards were prepared?
- Were there certain individuals that acted more strongly than others?
- Were concerns of individuals given as much weighting as groups?
- Do you think by not having the rule, the effects based approach of the RMA was exercised?
- Was there any concern raised by lifestyle allotments and no minimum allotment requirements?
- If the plan was prepared to be effects based, why was subdivision a controlled activity (something that does not require a detailed assessment of objectives and policies is not necessary)?
- What is your view on lifestyle allotments? What sort of provisions do you see best fit to enforce such a view?

Nathan Hole

- Can you tell me about your history of work as a planner? What did you study?
- What are your main interests in planning or career highlights?
- What were your views on the subdivision rules, specifically in the area surrounding Fairlie and Ashwhick Flat?
- Do you think the effects based approach achieved the plans objectives and policies?
- I understand your time at MDC was dominated by PC13, one of the biggest plan changes in NZ and one that took approximately 10 years to get through environment court. In terms of subdivision... what were the main issues Council sought to address? And how did they do so?
- Were there certain people who advocated for or sought to restrict PC13 in terms of the subdivision rules of the Rural Zone? If so, who were they and what were their main points? Were any successful?

Mark Geddes

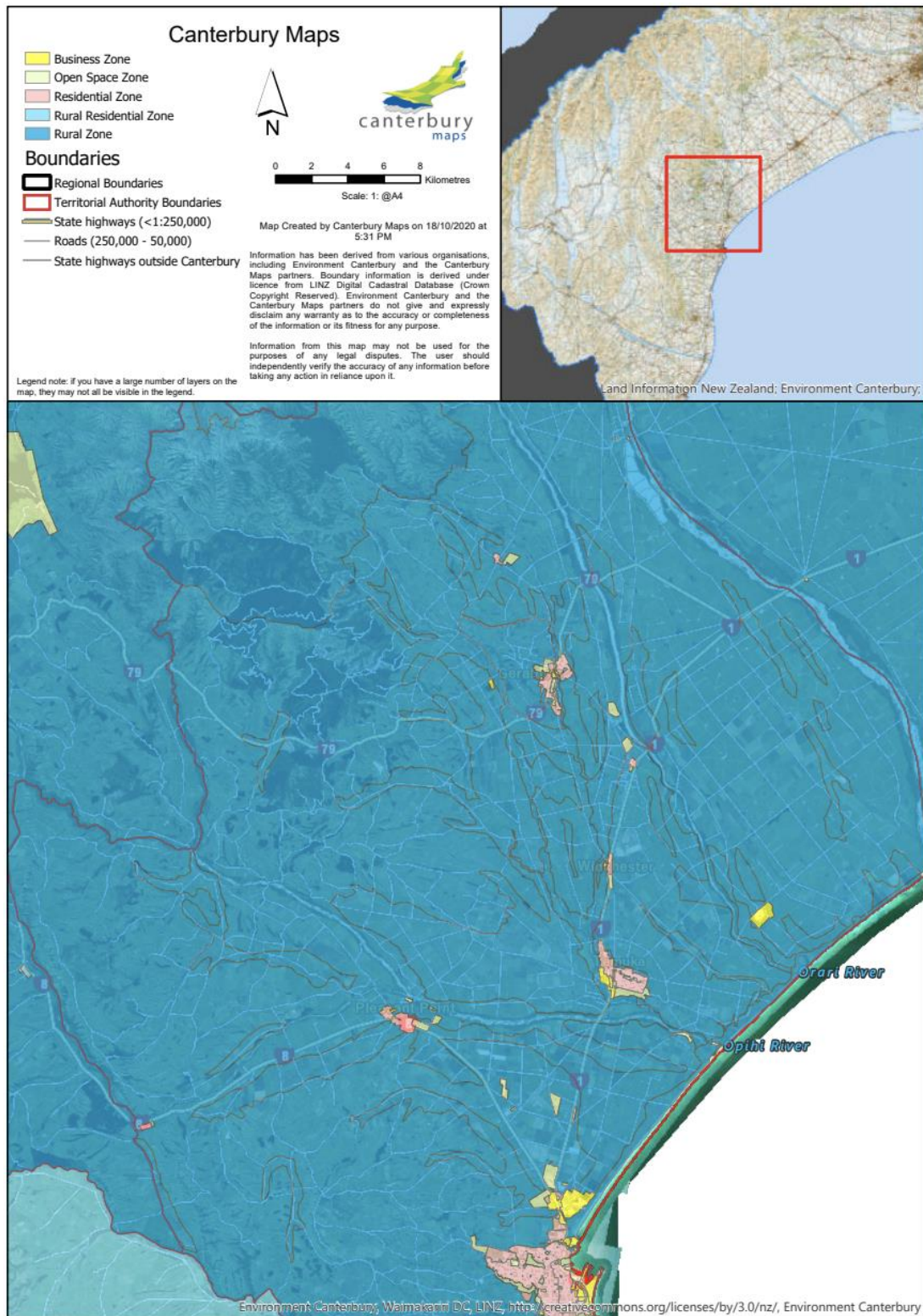
- How successful do you think the Rural 1 Zone subdivision rules have been?
- When I undertook my document analysis, the community boards for Temuka, Geraldine and Pleasant Point had significant input into the Rural 1 RLS provisions. Can you explain to me what the role of community boards are in a District?
- How do their actions reflect the communities as a whole? Would you think their actions are more valued because of their 'position' in the District?

- What is your view on lifestyle allotments? In your view, what are the ideal provisions for ensuring your view of lifestyle allotments occur?

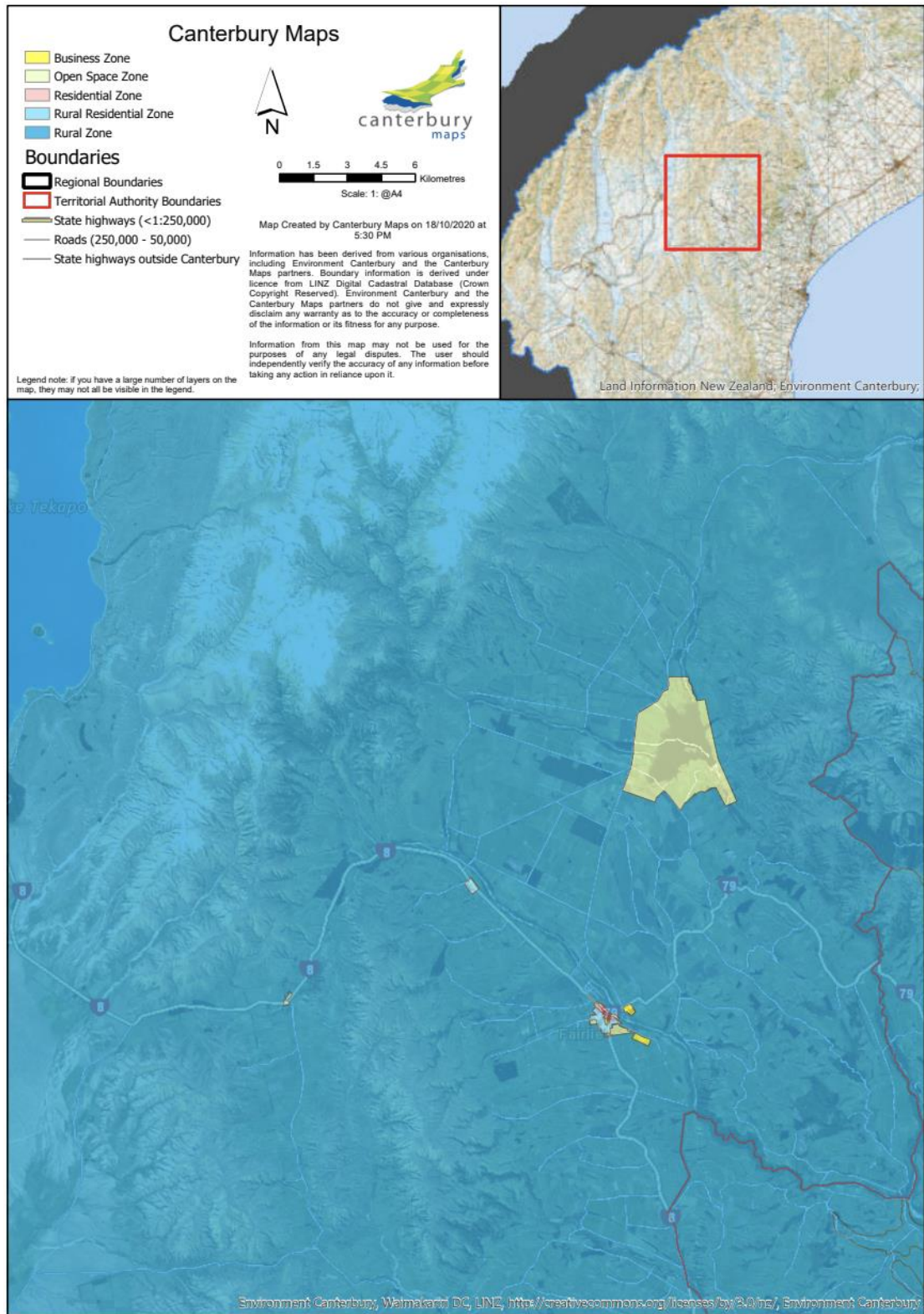
Appendix B

Zone Maps and Sample Areas

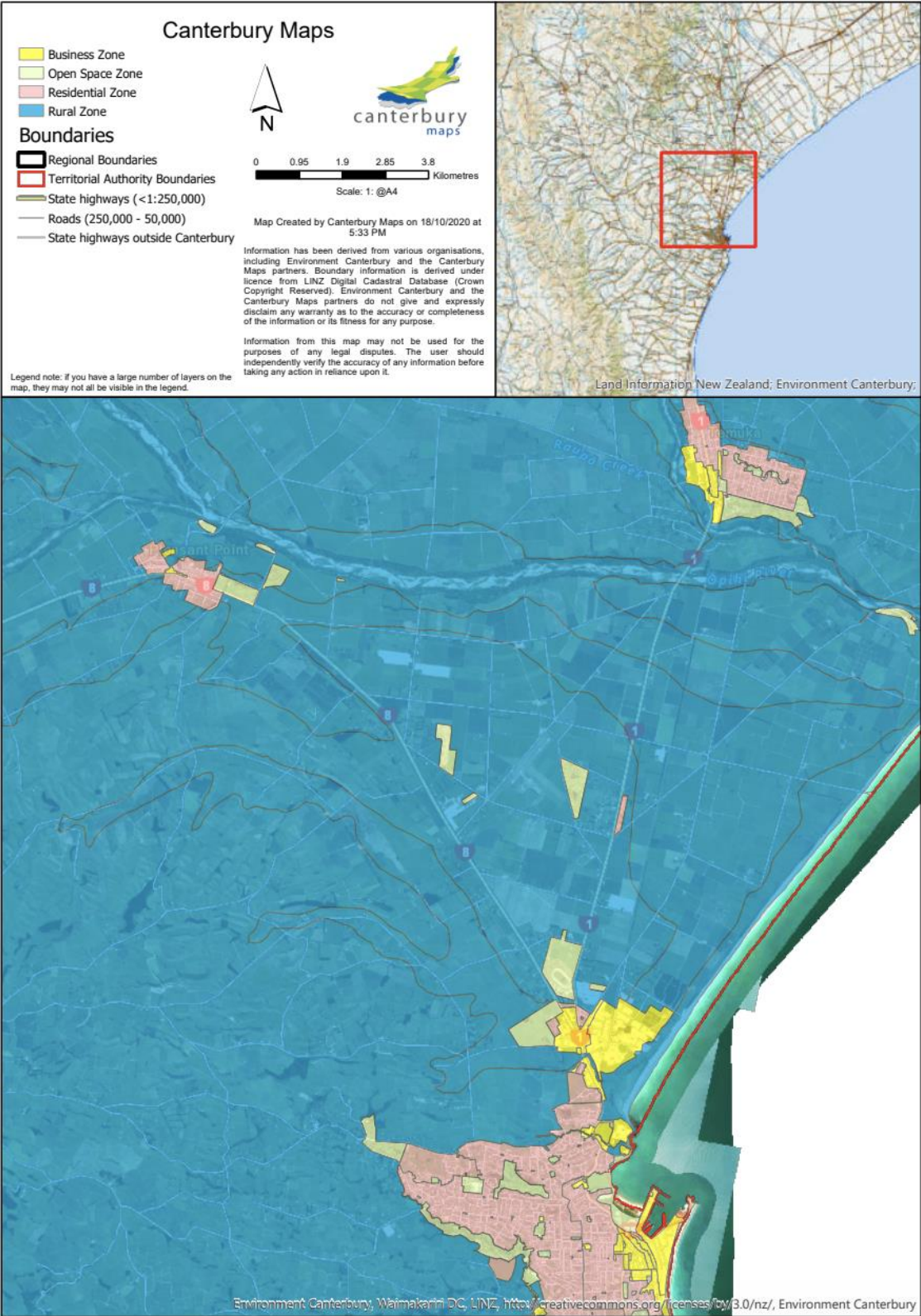
B.1 Zone Map Timaru District Council



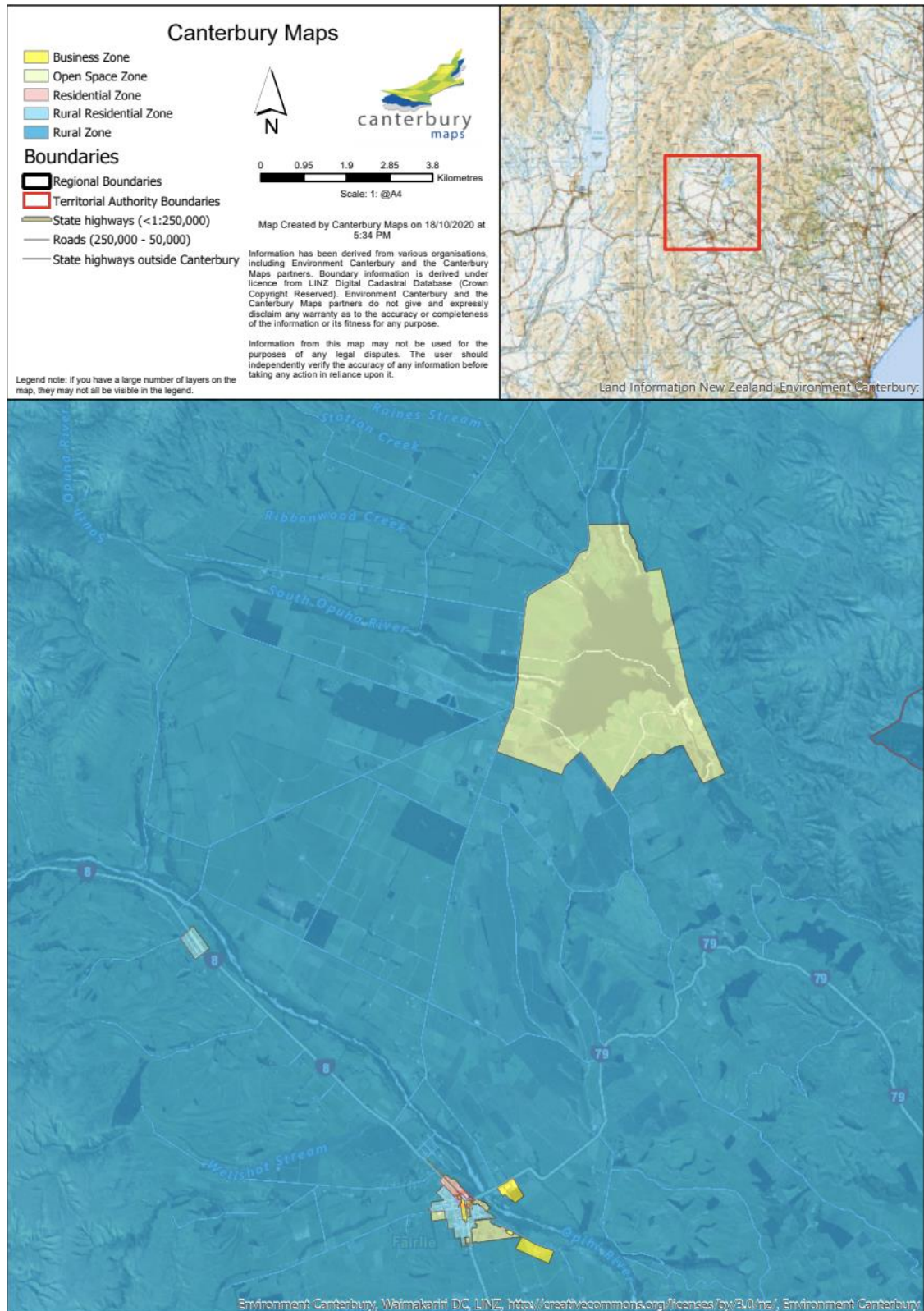
B.2 Zone Map Mackenzie District Council



B.3 Sample Area Timaru District Council



B.4 Sample Area Mackenzie District Council



Appendix C Raw Notes of Resource Consent Applications and Decisions

C.1 Timaru District Council Applications and Decisions

1) No.4935 Gleniti Road, Timaru

W and C Bower – prepared by consultant Milward Finlay Lobb.

January 2003

Discretionary activity

Written approvals were provided by neighbours

Three allotment subdivision, three lifestyle allotments of 6,400sq.m, 2.08ha, 1.30ha.

Cumulative effects considered and said the rural living nature of the area... screening of existing vegetation of future building platforms.

Granted by Regulatory Services Manager (March 2003):

Density is consistent with surrounding environment and rural living sites

Rural character relies on existing vegetation (upon granting of the consent, but nothing saying that the vegetation cannot be removed)

2) No.5785 Butlers Road, Pleasant Point

A Howey prepared by Consultant Glasson Potts Fowler

12 lifestyle allotments (2450sq.m to 4200sq.m in area) with two balance sites of Lots 13 and 14. Both owned by applicant and lots 13 and 14 will be covenanted to restrict further subdivision)

Council processed on a publicly notified basis with three written approvals of surrounding neighbours. 5 submissions. Golf Course supported, along with two others, and Te Runanga O Ngai Tahu did not support nor oppose it.

ECan opposed the developed, especially in the area where Lots 10 – 12 were located due to a more hazardous prone parts of the site (flooding and stream). Thus, the decision was made to remove Lots 10 – 12 of the application. It was nothing to do with rural amenity, only natural hazards.

Flooding was a large issue as part of the application, mitigated with floor heights and building platform areas.

The decision was granted by the hearing committee, but Lots 10 – 12 were removed from the application, thus only 9 lifestyle allotments were granted. (The considered it not contrary to the Obj/Pols because of the removal of 3 RLS, only assess natural hazard policies in decision?).

Conditions –

- landscape plan for each dwelling at time of building consent
- a consent notice saying the RLS owners cannot submit against rural activities in terms of reverse sensitivity issues.
- No future subdivision of any allotments.

3) No. 6497 Rosebrook Road, Timaru

N and A Light – prepared by consultant Selwyn Light Surveyors Limited

Six rural residential allotments – 2 stages, 1 RLS first, 5 in the 2nd.

Discretionary Activity Status -

Limited Notified application – 4 opposing the application

Issues:

- Building intensification and development

- Reduced loss of privacy, rural and visual amenity
- Reverse sensitivity
- Applicant and two submitters supported the application
- Opposing were concerned with minimum lot size, reverse sensitivity, further provisions of lifestyle allotments.

Hearing committee decision

- Rural amenity no more than minor effects – noted the number of existing dwellings on lifestyle allotments, size of allotments would ensure dwellings are separated and not result in the loss of outlook. Condition mitigate visual amenity effects (that being single storied dwellings, recessive colours on non-reflective services, no plantation planting)
- Lot 6 required a 50m setback from the eastern boundary (of which a submitter David Wreford owned who opposed the application in terms of building location and reverse sensitivity)

4) No. 6775 Spur Road, Timaru

April 2008

N and S Fitzgerald, E O Sullivan – prepared by Consultant MFL surveyor Russel Finlay

The rural titles into 8 RLS (1.0ha to 1.45ha) and balance. As a controlled activity by combining the three entitlements of the underlying sites and locating these in one cluster.

Council report: prepared by Nicolle Dally, granted by Peter Thompson Regulator Services Manager

Surrounding sites at this date were considered to be predominantly rural

No AEE consideration of objectives and policies, only in regard to physical provisions of water, access and roading upgrades.

C.2 Mackenzie District Council Applications and Decisions

1) RM150054

Application:

M and K Prosser

Prepared by consultant Land Services Group Ltd - Bruce Speirs (surveyor)

Date 28 August 2015

Two lot subdivision – lifestyle allotments of 2.3ha and 1.7ha

Controlled Activity

Very limited application, short assessment and only of discharge/physical assessment, no rationale why?

Assesses no more minor effect.

Decision granted by Nathan Hole (DPM).

Granted, effects no more than minor. Limited AEE information.

2) RM170086

Application:

31 August 2017

N Roberson and G Handy

Prepared by the applicants in an email without a site plan

It would seek as though Council have prepared a site plan on the applicants behalf?

Two allotment subdivision of 7,317 sq.m and the other is not listed.

No AEE in application, only an email.

Controlled activity, Council limited discretion to following matters:

- Subdivision Design Allotment Size and Dimension;
- Property Access;
- Esplanade Provision;
- Natural and Other Hazards; •Earthworks;
- Water Supply/Stormwater Disposal;
- Sanitary Sewage Disposal;
- Trade Waste Disposal;
- Energy Supply and Telecommunications;
- Vegetation and Landscape;
- Easements;
- Building Location; and
- Design within 20 metres of Transmission Lines.

Decision prepared Aaron Hakkaart, peer reviewed by Karina Morrow (DPM) and signed off by Suzette Van Aswegen (Planning and Regulations Manager):

Council have done an AEE in the decision

Subdivision design: is one sentence that says it acknowledges existing fence lines.

Allotment size and dimension: two allotments are of a size they are able to accommodate future development.

3) RM200042

Architects Plus Consultant

Three Bears Running Limited

June 2020

Nine allotments between 7,999sq.m to 9995sq.m

Detailed application and site plan

Discretionary Activity due to Road Frontage being less than 5m for some allotments

Council report prepared by Rachael Willox, approved by Ann Rodgers

Landscape and Amenities

The applicant has applied for subdivision consent to subdivide land legally described as Part Rural Section 32380 on Clayton Road, Fairlie, into nine fee simple allotments. The resultant lots range in size from approximately 7,999m² to 9,995m². The average size of the allotments is approximately 8,801m².

There is no minimum allotment size in the Rural Zone. The District Plan minimum allotment standards however are a key determinant in establishing character and amenity outcomes. A comparison with other zones in the District Plan is therefore important to consider as other zone standards provide context for the development. The minimum allotment size in the Rural Residential Zones for example range from one to four hectares (10,000 to 40,000m²). Allotments less than four hectares in the District Plan are therefore considered to be Rural Residential in nature.

The receiving environment has already been heavily modified by the creation of smaller allotments. In total there are 23 existing rural residential sized allotments in the receiving environment that are less than four hectares (40,000m²). The size of the existing allotments range from approximately 2,066m² to 13,807m². On average the existing allotments are approximately 6,985m². The nine allotments to be created are therefore considered to be of a size, scale and/or density that is in character in the receiving environment. The proposed allotments are on average 1,816m² larger than what is already existing. An aerial photograph displaying the existing allotments in the receiving environment is displayed in Figure 4.

Overlooked cumulative effects

Was considered to be consistent with the objectives and policies

Only components assessed were natural hazards, recreation and reserves, costs of services, subdivision services.

4) RM200047

August 2020

J Reid applicant who is the son of the land owner– consultants prepared application by Milward Finlay Lobb Ltd

Two rural lifestyle allotments of 1.74 ha and 2.51 ha

Discretionary due to flood risk

Rationale under Council assessment consists of landscape and amenity:

- There is no minimum allotment size in the Rural Zone. The District Plan minimum allotment standards however are a key determinant in establishing character and amenity outcomes. A comparison with other zones in the District Plan is therefore important to consider as other zone standards provide context for the proposal. The minimum allotment size in the Rural Residential Zones for example range from 1 to 4 hectares. Allotments less than four hectares are therefore considered to be rural residential in nature.
- While the allotments are rural residential in nature, the adverse effects of the subdivision in regards to landscape and amenity are considered to be less than minor for the following reasons:
- The receiving environment has already been modified by the creation of lots less than 4 hectares. The adjoining land parcels to the east for example are approximately 1.84 hectares and 2.17 hectares. The allotments will therefore be in character in receiving environment;
- The Fairlie township is located approximately 400m east of the site. An allotment size less than 4 hectares is therefore considered to be appropriate in the area;
- The allotments both have suitable building platforms that comply with the internal boundary setbacks required in the Rural Zone. Adjoining landowners rural outlook, spaciousness and

privacy will therefore remain unaffected by the proposal as the density of bulk form will not be increased.

Written by Planner Rachel Willox, decision signed by Ann Rodgers DPM.